THE

VIEW OF FRANKPLEDGE,

&c. &c.

AN ACCOUNT

OF

THE CONSTITUTIONAL ENGLISH POLICY

OF

CONGREGATIONAL COURTS,

AND MORE PARTICULARLY OF THE GREAT ANNUAL COURT OF THE PEOPLE, CALLED

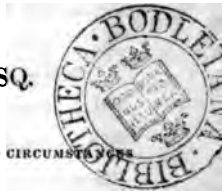
The View of Frankpledge;

WHEREIN THE WHOLE BODY OF THE NATION WERE ARRANGED INTO REGULAR DIVISIONS OF TITHINGS, HUNDREDS, ETC.

WITH TWO TRACTS ON COLONIZATION.

BY THE LATE

GRANVILLE SHARP, ESQ.



AND NOW REVISED AND ADAPTED TO THE ALTERED CIRCUMSTANCES OF THE COUNTRY,

With a short Memoir of the Author,

BY J. I. BURN,

AUTHOR OF "LETTERS ON EMIGRATION," ETC.

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MEMOIR.

GRANVILLE SHARP was the youngest son of Thomas Sharp, Archdeacon of Northumberland, and grandson of Archbishop Sharp; his father, the archdeacon, having been also the youngest son of the archbishop. Granville Sharp thus had the happiness of springing from a family in which piety, virtue, and benevolence seemed to be hereditary. He was born at Durham, November 10, in the year 1735, and was in due time apprenticed to one Halsey, a quaker and linendraper in London. It appears to be singular enough that his father, a dignified clergyman, should have made such a choice. The quaker dying in three years, he was then made over to a Mr. Willoughby, a presbyterian or independent, and afterwards lived with an Irish papist, and lastly with a master who had "no religion at all." It is related of him, that a series of controversies with an inmate of his master's house, (the last probably,) who was a Socinian,

led Mr. Sharp to study Greek, his opponent having constantly alleged, when Granville quoted the New Testament, that the original did not admit of his interpretation. He acquired Hebrew from a similar motive, in order to confute a Jew who resided under the same roof. How singular and unfathomable are the ways of Providence, and by what unlikely and seemingly improbable means are great events produced! The remark is made here, for had no such opponents arisen to unsettle his opinions, or he been indifferent to them, some of the most valuable biblical criticisms and elucidations, afterwards given to the world by our author, would probably never have been thought of or had existence.

It is a singular fact, also, that during his apprenticeship he had the good fortune to raise his presbyterian employer (Justice Willoughby) to the honours of the peerage, having discovered that the justice had a rightful claim to the title of Baron de Parham. Our author exerted himself so effectually in establishing the case, that the claims were admitted, and he sat for the remainder of his life a member of the House of Peers.

On the death of his father, the archdeacon, Mr. Sharp quitted business, and in 1758 he procured a subordinate appointment in the Ordnance

Office. Little is known of him for the following six years, except that he completed his great attainment in languages; his hours of study having been chiefly snatched from sleep, and that he attended diligently to the duties of his station. His character soon after this period began to unfold itself. In the year 1760, the learned Dr. Kennicott published proposals for printing a new edition of the Hebrew Bible, conformably to one of the best editions then extant, designing to insert in the margin the various readings of other editions, with such corrections of the text as appeared to be necessary. This was to have been by subscription. During the progress of the matter, the learned critic contemplated the more hazardous project of printing a Hebrew Bible, wherein the conjectures and other emendations were to have been incorporated in the text. To shew the necessity for this, Dr. Kennicott handed about a paper, entitled, "A Catalogue of the Sacred Vessels restored by Cyrus, and of the chief Jews who returned from the Captivity; together with the names of the returning families, and the number of the persons at that time in each family, disposed in such a manner as to shew most clearly the *great corruptions of the proper names and numbers in the present text of the Old Testament.*"

Alarmed at this project, Mr. Sharp drew up a tractate in reply, wherein he questioned the authorities and deductions of his learned opponent, examining them by the test of numerous Hebrew names and roots, accusing the doctor of drawing his instances of textual corruption from the English version only, without reference to the original. His aim being not to shew his own learning, but solely to prevent what he considered a serious evil in sacred literature, both the progress and result of the matter were alike honourable to him. He did not publish his tract, but distributed it gratuitously, and to such parties only as could produce a copy of Dr. Kennicott's own printed proposals. Dr. Kennicott was therefore obliged to confine himself to his original plan, viz., of publishing the text entire, and throwing his variatæ readings into the margin; upon hearing which, Mr. Sharp remarks in his Diary, "I gave up all thoughts of printing what I had prepared to oppose him, and subscribed to his work." That Mr. Sharp's contest with this literary veteran did not disturb the amiable spirit which distinguished him, we may learn from the following entry—"August 20, 1775, Sunday, Oxford. Went to church at St. Mary's; went to visit Dr. Kennicott; *drank tea with Dr. Kennicott.*"

The delicacy and disinterestedness shewn by

our author in this transaction extended to his numerous other publications; only two, *out of more than fifty*, having been printed by himself for sale. He generally distributed his writings gratuitously, when he considered it desirable to circulate them; and devoted a considerable part of his small income to this object, after supplying his own wants, which were few, and relieving the necessities of others, which he did to the utmost, often beyond the measure of prudence. This spirit appears from his confidential letters to his friends. To his brother William, for example, he says—"I have finished my warning to the quakers, a copy of which is inclosed in this parcel for you; but you must not part with it to any other person, because I am under promise to the quakers not to give it to any persons but members of their society, except occasionally to a Roman-catholic or a Swedenborgian." Respecting the Roman-catholics themselves, against whose principles he evinced an extraordinary zeal, a similar remark occurs; while to the individuals he behaved with the utmost kindness and urbanity. The two exceptions to his general rule of publication were, on account of their public nature and importance, the two following—"The Injustice of tolerating Slavery in Great Britain," and "The Greek Article," which, in one of his private manuscripts, was

postponed, he says, "from 1778 to 1798, and would not even then have been published if my very worthy and learned friend, Dr. Burgess, now Bishop of St. David's, had not undertaken to be the editor of it. Two different editions of it were printed, and the bitter objections of some scurrilous Socinians spurred me up at last to answer them in a third edition."

About this period Mr. Sharp's attention was first directed to that great subject, the amelioration, and, if possible, ultimate abolition of slavery. His name stands the foremost in the list of champions for freedom, and will be handed down to posterity with eulogies by men of every sect and party. His exertion in this glorious cause will for ever establish for him an imperishable fame.

Our author was the personal abolitionist of African slavery in England, and the first and chief agent in effecting the total extinction of that abominable traffic. Never were exertions more ably and perseveringly made than by this excellent man, in the case of Mr. Somerset, a slave landed in England, and by that act freed from his bonds. This important case had been selected, as it is said, at the desire both of Lord Mansfield and our author, to settle the question as to the right of the British soil to embrace in its constitutional freedom all who touch upon its

shores, of whatever clime or nation. Lord Mansfield declared, at the commencement of this trial, that, " If it should come fairly to the general question, whatever the opinion of the court might be, even if they were all agreed on one side or the other, the subject was of so general and extensive concern, that, from the nature of the question, he should certainly take the opinion of all the judges upon it." On the trial it came out, that Somerset's master was backed, and the expense paid by the West India merchants; but, happily for our author's cause, his exertions had awakened so great a sympathy for the unfortunate object of his protection, that he received the most generous offers of professional assistance, and none of the five eminent counsel who pleaded his cause (Sergeants Davy and Glynn, and Messrs. Mansfield, Hargreaves, and Alleyne,) would receive any remuneration for their exertions. Lord Mansfield, after repeated postponements, at length stated, that though he had at first thought to put the case in a more solemn way of argument, yet, as all the judges present were unanimous, it would be injustice not to give a decision. That was in favour of liberty, and ought to excite our respect for that eminent judge, in patiently hearing and acknowledging himself to be convinced by arguments which, in truth, controverted his former

assertions and proceedings. "If the merchants," said his lordship, "think the question of great consequence to trade and commerce, and the public should think so too, they had better think of an application to those who will *make* a law. *We* must *find* the law; we cannot make it." This most important cause was decided 22nd June, 1772.

To enable the reader to form a judgment of the value of Mr. Sharp's exertions in this sacred cause, the following example, among many others, is quoted, to shew the cool contempt then shewn to human life and freedom. In the Gazette of April 18, 1769, among the sales—"At the Bull and Gate, Holborn, a chesnut gelding, a tun of whiskey, and a *well-made, good-tempered black boy.*" Rewards were frequently offered for securing fugitives in some specified ships in the river, with a proviso evincing some degree of respect for public opinion, that "*the utmost secrecy may be depended on.*" In the New York Journal of October 22, 1767, it appears that our American brethren went still further in outraging the feelings of mankind:—"To be sold," says this journal, "a healthy negro wench, of about twenty-one years old; is a tolerable cook, and capable of doing all sorts of house work; can be well recommended for her honesty and sobriety; she has a *female child of nigh three*

years old, which will be sold with the wench *if required*." So also the following from the Williamberg Gazette in Virginia :—" Run away from the subscriber, a lusty, strong, bony, negro fellow, named Bob, of a brownish complexion, &c. The said fellow is *outlawed*, and I will *give ten pounds* reward for his head *severed from his body*, or *forty shillings if brought alive*."

It is somewhat singular and very satisfactory to find, that in the pursuit of the one great object of his care and solicitude, in the restoration of a slave to his civil rights, our author was induced to investigate our laws in so minute a way, as to lead ultimately to the first essay in the book now given again to the public in its modified shape.

Thus the solid principles of our civil liberty are happily blended in such a manner with individual protection as to prove their perfection, and, as has been said, constant adaptation to every change of circumstance and every advance in civilization.

So strong, however, was the law supposed to be against him, that in an action he had to defend for robbing a Mr. Lisle of his slave, as he alleged, in procuring his discharge at the Mansion House, that he says—" Forsaken by my professional defenders, I was compelled to make a hopeless attempt at self-defence, though I was

totally unacquainted either with the practice of the law or the foundations of it, having never opened a law book, *except the Bible*, in my life until that time, when I most reluctantly undertook to search the indexes of a law library which my bookseller had lately purchased." In consequence of this resolution, Mr. Sharp gave himself up for nearly two years to an intense study of the English laws with regard to the *liberty of the person*, and collected an immense mass of matter bearing on the subject, the principal part of which was handed about, in more than twenty manuscript copies, among the gentlemen of the law for nearly two years, during which Lisle contrived to suspend the action. This tract produced such an effect, that Lisle at length declined bringing forward the action at all, and was in consequence compelled to pay triple costs. The great point at issue, however, thus remained undecided until Somerset's case was heard in 1772.

Mr. Sharp's political opinions are compendiously given by him in a letter to Lord Carysfoot, in 1781 :—"This is the compendium, or sum total, of all my politics, so that I include them in a very small compass. I am thoroughly convinced that *right* ought to be adopted and maintained on all occasions, without regard to consequences, either probable or possible ; for these,

when we have done our duty as honest men, must, after all, be left to the disposal of Divine Providence, which hath declared a blessing in favour of right—"Blessed are the keepers of judgment, and he that doeth righteousness at all times."

In strict accordance with these admirable principles, the following instance is given of his inflexible integrity:—In 1775, on the breach with the American colonies, we find among his papers a minute, July 28, 1755—"Large demands of ordnance stores being ordered to be got ready with all expedition, I thought it right to declare my objection to being in any way concerned in that unnatural business, and was advised by Mr. Boddington to ask leave of absence for two months, as the board would take it more kindly than an abrupt resignation." This was readily granted, and renewed from time to time, in deference to his conscientious scruples, for *nearly two years*, his superiors feeling such high esteem for his character and confidence in his abilities, that they were unwilling to relinquish his services, till the progress of the war rendered it absolutely necessary to supply his place. He offered his whole salary during his absence to be divided among his colleagues. He was now destitute, having spent the remains of his paternal inheritance and the emoluments of his office in

acts of bounty. The affectionate attentions of his brothers, all prosperous, brought them instantly to his relief, with the most delicate and liberal offers of permanent assistance. This mutual affection induced them to consider the presence of Granville, as an inmate under any one of their roofs, as a desirable accession to their domestic circle; in addition to which, his worthy brothers placed an annual sum of money at his disposal, which was soon after commuted for a fixed capital, thus precluding any feelings of conditional dependence upon their bounty. Their letters are a delightful specimen of family harmony. "I will now speak for my brother William as well as myself," says James; "we are both ready and willing, and, God be thanked, at present *able*, to take care that the loss of this official situation shall be none to you; and all that we ask in return is, that you will continue to live among us as you have hitherto done, without imagining that you will be burdensome to us, and also without supposing that it will then be your duty to seek employment in some other way of life, for if we have what is needful amongst us, it matters not to whom it belongs." To which William in a postscript adds—"Dear Granville, I most heartily approve of what my brother has written above, and hope you will think of the matter as we do." Mr. Sharp ac-

cepted this offer, and continued to share the table and the purse of his exemplary brothers for several years, till some bequests and other circumstances restored him to independence.

His efforts, however, in favour of the negroes did not cease with the decision of Somerset's case; for a motion having been made in parliament, and *nearly carried*, to legalize slavery in England, according to the trial given to the West India party by Lord Mansfield, it became necessary to use renewed diligence and employ every practicable means for preventing such an evil. In 1779 is the following memorandum:— "This spring I have, at different times, had the honour of conversing with twenty-two out of the twenty-six archbishops and bishops on the subject of the slave trade, during the time that the African affairs were under the consideration of the House of Commons," and met with *none* who did not concur with him in his sentiments on the subject. A record, then, of the most honourable nature to the prelates, both as churchmen and senators, at a time that the public mind, too, was far from being settled as it now is on these important topics.

Mr. Sharp's death, which happened 6th July, 1813, was preceded by the gradual declension of his faculties; he became superannuated; his piety, his benevolence, his placidity, never for-

sook him. Thus, at seventy-eight, this most excellent man exchanged a mortal for an immortal life, and is gone to the reward open to all who follow the Saviour as he did, in always going about and doing good, and obeying the will of God. Mr. Sharp was buried in the family vault at Fulham, and a monument has since been erected to his memory in Westminster Abbey, by the African Institution.

INTRODUCTION.

I HAVE undertaken the task of an Editor with great satisfaction, for the subjects are of vital importance to the well-being of society. The just foundation of our ancient and invaluable institutions is so fully and clearly set forth by the excellent author, that I have had little more to do than to transcribe his text, with such additions incorporated therein, occasionally, as he had more voluminously introduced in his notes. I have omitted, also, what is now inapplicable in reference to parliamentary reform. This appeared to me more likely to gratify the general reader, and better adapted to the present time. There is no omission of authority; but the details, as given in the notes, overloaded the work, and made it, consequently, so much less readable and interesting. The narrative, too, if it may be so called, was too much broken; the attention too

much diverted, and the subject thereby not so clearly comprehended.

The structure of society, founded on such principles, can never decline. It is in the departure from them that the social edifice has been defaced, its harmony in many cases destroyed, its beauty injured. Like the sacred ruin of a mighty temple, covered with ivy, the delicacy and just proportion of the parts are unseen; and decay is advancing, by the very covering that appears to protect it. The venerable edifice can hardly be traced through the mass of foliage, or verbiage, to drop the simile, by which it has been overlaid.

It is indeed surprising and gratifying to the contemplative mind to find so much of perfect wisdom in the institutions of Alfred, and the ready and constant application of them to every condition of society. Beginning as our author does with the principles therein settled, he goes on with them through all changes, and with increasing advantage, as civilization advances. Like that universal and never to be altered rule, that "whatsoever ye would that men should do unto you, do ye even so to them," the rich fountain of the common law is of universal application. The most learned, the most unlearned, are embraced with equal propriety in its wide provisions. Whatever new relations the progress

of manners and their changes may create, none can arise to elude its vigilance, its vigour, or its use—that is, if the solid and true principles wherein it is founded be not first departed from. The light of it is ever clear, the value ever increasing; the benefits, in consequence, ever new, and never failing.

I am perfectly aware that grievous inroads have been made upon these unquestionable principles; but equally convinced that these are more useful as warnings of danger than as guides to safety.

I need not go far to satisfy the attentive reader that hasty and ill-digested legislation creates oftentimes as much evil as it professes to redress. What is more familiar to us than the constant amendments of statutes already passed, by others that ere long are in the same predicament? Why, by departing from, or not strictly adhering to those constitutional principles so ably set forth in the text. In the pure source of the principles of the common law there is an inexhaustible stream of practical good. It is, as I have said, of never-failing application. No case has ever arisen, no case can ever arise, which has eluded, or can elude, its authority. Like the precept quoted in the gospel, the most barbarous and the most refined equally share in its advantages. It grows with the growth of society. It

expands with the expanded relations of commerce. It is suited to every state, and useful to all. This is the case, indeed, with every principle drawn from the infallible source of Scripture. Happy for our times and country if this little work shall excite the inquiring mind to recur at once to those solid foundations for civil government so happily begun by Alfred, and still so well adapted for use.

In the other parts of our author's writings on the principles of colonization, I shall take leave to make some remarks adapted more particularly to present times. Not that his principles are ill-founded, but rather as elucidating them by evidence furnished since he wrote. To begin a new colony with the refuse population of the mother country is certainly the very worst policy that can be pursued. The materials for a new settlement thus degraded and defiled are sure to operate disadvantageously. The very germ and seed of depravity is sown, to produce with fatal certainty its proper fruit of crime and insubordination. When is this foul leaven likely to be wrought out? When can it be predicated that effects of a more beneficial character shall arise, to qualify or turn the polluted current into a more wholesome channel? Every obstacle is at the threshold thrown in its way; every discouragement given to a better grade of

society. Lord Bacon says, we should plant with carpenters, masons, &c.

A colony ought, in fact, to go out with all the requirements of a civilized community, and according to the circumstances of the country, whether it be to an unreclaimed wilderness or to a peopled country, but always carrying out the Bible, and the common law founded upon it, as the only secure basis of the structure. Now, on these firm foundations there can be no failure; on any other, no permanent success. But the good sense of the settlers is still required to locate themselves to the best advantage. On this part of the subject a safer guide can scarcely be followed than that of the allotment system, so fully set forth by the Labourers' Friend Society in this country. The principles of the allotment system are applicable to all cultivators, whether of large or small farms, and following in the proper limitation proved by the Society, are sure also to be attended in the colony with equal security and advantage. On this very important subject I would extend my remarks a little, and prove as I go on, by evidence, that they are well-founded. Labour being, in truth, the basis of all societies, old or new, mother countries or colonies must ever be in exercise. Labour combines in it all that constitutes the comforts, and even luxuries of life. It first produces all

the capital of the world, and when expended reproduces it again. What it first creates, then, it again repairs and sustains. Every want of man is thus supplied—every evil incident to humanity, labour tends to lessen or destroy. Without labour, constant and unremitting, of some human beings, the whole mass of society, themselves included, would soon crumble to pieces, and be reduced to wretchedness and destitution; so soon, indeed, that one single year of perfect idleness of all now engaged in useful labour would probably more than one-half thin the ranks of mankind. All would be consumers, none producers. What a hideous—what a frightful prospect! A populous town in a state of siege, and without supplies, but faintly prefigures such a scene.

To find out and keep up a market for labour, then, appears to be the first and also the last duty of civil government, on which the safety, peace, and welfare of every state depends, and without which none can ever stand secure.

Colonization is one mode of doing this with great advantage when well conducted, and it is with regard to colonization that these remarks are made; for an equally certain market exists at home, with quite as happy, if not happier, results to the mother country. The only capital of the labourer is his labour; he has no other;

he needs no other, if the fair opportunity be given him to use it, as he is entitled to do, for his own advantage.

This opportunity is readily afforded in a new country to which he is taken, and wherein he is set to work. Now, to a man so circumstanced, it may be asked, what is to be the size of his farm, and what is he to pay for it? Why, it is clear that more than he could cultivate would be too much at first, even if it were rent free; but some return he could make in produce, if not in money, and in a short time and on agreed terms, probably be able to buy the land. He would have the best natural right to it, as occupant, and be best able to keep it, as cultivator. If he afterwards, and by degrees, could cultivate more, he should be entitled to more. If his family increased to assist him, the sphere of his labour should consequently be enlarged. To elucidate this more clearly, let us take, for an example, a labourer here, who has an allotment for which he pays thirty shillings rent, and which he can fully cultivate, and that he could get more land for forty shillings, which he could not fully cultivate; in other words, that he could only do justice to himself and his landlord on three-fourths of his allotment or farm; would he not then be paying ten shillings more rent than he could meet by produce? for produce must always

pay the rent, and keep the farmer too. I do not say the labourer might not do this, but it would be improvident and useless. Would he not gain more by adhering to the smaller allotment, in which every part would be fully cultivated? Would he not clearly save the ten shillings extra rent paid, in truth, for nothing? Now, this applies to the farmer or the settler, just as well, and on just the same grounds, as it does to the labourer or smaller farmer. If he (the farmer) take one hundred acres, having the capital, and no more than the capital, to buy labour for eighty acres, he pays rent in reality for twenty acres quite useless to him, for though he might not suffer the twenty acres to be wholly uncultivated or idle, yet the whole of his farm, the one hundred acres, would be inefficiently managed by the labour required for eighty. It is clear, then, that the farmer so circumstanced would make more by the eighty than by the one hundred acres. The same reasoning applies to all farms, large or small; and no safer rule than that of capital or labour equal to, and neither more nor less than equal to, the farms, can be followed. But the great practical use to be made hereof is proved in evidence by the allotment system in this country, (now extended to nearly, if not quite, 100,000 tenants,) for that the average increase by these cottagers' labour

alone is an addition of 2*s.* 6*d.* to their weekly wages. This is of their own earning. Their rents are well paid, and their produce to pay them, by spade husbandry, generally double, sometimes treble, and in many cases quadruple, that of the larger farmer. Thus this principle will apply, and may be carried out, as well in a colony as at home—the benefit is equal, and the labour probably less. Still there is a directing hand needed in the first mode of locating colonists, so that the greatest good shall be secured, and the greatest inconveniences averted.

On this point I refer to the text with confidence; but in a new country and climate much, no doubt, must ever be left to the good sense and practical experience of the settlers. Here again, however, the principles of the common law apply in happy accordance with those of cultivation. They mutually support and improve each other, and lead necessarily to the greatest degree of peace, and comfort, and happiness, our nature is capable of enjoying. Advancing in this combined and harmonious course, who loses? No one. Advancing on this impregnable foundation, who gains? Everyone. Is it possible to imagine a failure even in a less fertile season? No; for even then all the evils attendant thereon would be diminished, all the benefits of industry and providence increased. Such are the certain

results and advantages attending this system in the mother country. Carrying out the same principles and almost the same practice, how can it be otherwise than equally favourable to the colony?

Assuming that such principles are acted upon by a population derived from the parent state, not of convicts, not of doubtful or desperate characters, not of vagabonds, but of selected, honest, and industrious individuals, whose habits are all formed, some to one mechanical or agricultural pursuit, some to another, but all leagued together in pursuit of one common object, the improvement of the country, and consequently of their own condition in it, what can be more gratifying to the philanthropist? All labouring for the common good, by pursuing each his own separate interest in the value of that labour, without which, as we have seen, nothing can be secured for either profit or convenience,—all united on the congregational principles, so clearly established and set forth in the text,—what can be predicted of such a society, increasing, as it may, in numbers, either by birth or immigration—what, but a state as enviable, as happy, contented, and flourishing, as the imagination can conceive? The whole machinery of the least complex, and most simple, but efficient character, and never varying, or in any degree

diverging from that solemn march of improvement, that seems in truth a heaven upon earth. The structure of such a society is founded on adamant: the floods may come, the rains descend, and the winds blow; it cannot be shaken, it cannot fall. Now, with such a colony so securely based, let us see what benefit it necessarily reflects back on the mother country, whence so many of her mechanical and manufacturing supplies must long continue to be drawn. What the colony requires in these respects she amply repays by her increased produce, her increased and increasing resources of all kinds, all accumulating for the mutual benefit of each country. A constant progression of benefits—the ties of kindred, of origin, and religion, more closely drawn together, and the improvements of each more directly and speedily imparted to the other. This is really no theory, no pleasing dream of anticipated blessings which cannot be realized, no impracticable scheme not suited to the state of the colony in its commencement, its progress, its perfect assimilation to the parent state. The principles have all been tried, they have never failed, they never can fail, when practised in that beautiful simplicity and order already shewn; and founded as they are on that highest ground of all establishments of human beings, the Divine will and promises, as contained in the Bible.

The views entertained by the excellent author in regard to colonial settlers are, no doubt, sound and sensible, as are all the others on the main subject of his book. Time and circumstances, however, may require some little deviation, in particular localities, from the exact plan he suggests, yet still in strict accordance with his principles and the general scope of his arguments.

Should I, in thus endeavouring to rescue from that oblivion such excellent materials were falling into, succeed in making them acceptable to the general reader; should my humble endeavour, as editor, be successful in bringing them again into circulation; should the public feel with me that the time is propitious for it, and that now, when wandering notions on all subjects affecting the social system are abroad, and the schoolmaster too, who sometimes leads and sometimes follows them: if I shall recal attention to the sure foundations on which society rests, and bring back the mind to the great leading and never to be forgotten principles of our constitution, it will be indeed a great reward for my labours—a grateful return, and most gratefully received.

J. I. BURN.

April, 1841.

THE

VIEW OF FRANKPLEDGE.

THE first division of this kingdom into hundreds and tithings was ordained by the virtuous and patriotic King Alfred, who is expressly said to have therein followed the prudent council given by Jethro to Moses:—"Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee throughout thy tribes, and they shall judge the people with just judgment." (Deut. i. 9—17.) This was ordained for the more commodious government of the Israelitish commonwealth; it being, indeed, an institution thoroughly consistent with the most perfect state of liberty that human nature is capable of enjoying; and yet competent, nevertheless, to fulfil all the necessary purposes of mutual defence, the due execution of all just and equal laws, and the

sure maintenance of the public peace. "Wonderful fruits of utility would this one counsel of Alfred (or rather of Jethro) produce to the common-wealth," (says Lambard,) "if we would no longer use the shadow, but hold the substantial form of the true tithing." In the laws of King Edward the Confessor this mode of national defence, by free popular societies of armed citizens in every district and vicinage, is called "summa et maxima securitas, per quam omnes statu formissimo sustinentur," &c., the chief and greatest "security by which all men are sustained in the firmest state, viz., that everyone" (unusquisque) "should establish himself under the security of a covenant," (or suretyship,) "which the English call freoborhges," (i.e. free pledges,) "but the Yorkshiremen alone call tienmannatala, which, expressed in the Latin tongue, is decem hominum numerum," (the number of ten men.) "This security was constituted in the following manner, viz., that all persons," (universi,) "of all the towns of the whole kingdom, ought to be under a decenal suretyship: so that if one of the ten should forfeit," [viz., forfeit his freepledge—i.e., his credit in that little community as an honest and legal member of it, probus et legalis, (see Magna Charta,) by which estimation alone his neighbours could so far confide in him as to admit him into their tithing,

and had a right to expect from him a return of mutual security,] "the nine should have him to" (trial of) "right," (or indict him;) "but, if he should abscond, a term in law of thirty-one days should be allowed him: being sought in the meanwhile and found, he should be brought to the king's judgment," (i.e., to judgment or justice in the king's courts,) "and there, out of his own" (property,) "should make good whatever damage he had done. And, if to this he had forfeited," (or failed,) "justice should be done of his body. But if within the aforesaid term he could not be found, the chief, or head, for in every freeborough" (or tithing) "there was one chief, whom they called Freeborough Head," (freoborges heofod, i.e. headborough, or tithingman,) "should take two of the better sort of people of his freeborough, and also out of the three nearest freeboroughs he should take of each one chief and two of the better sort of people, if he can have them; and so, the twelve being convened, he shall clear himself and his freeborough (if he can do it) of the forfeiture and flight of the aforesaid malefactor. Which if he could not do, he, with his freeborough, should restore the loss out of the property of the malefactor as long as any should remain; failing which, he should complete" (the restitution) "out of his own and that of his freeborough, and

should satisfy justice according to what should be to them lawfully adjudged," &c. Thus all the honest inhabitants of every vicinage, being answerable in their own private fortunes and property for all the damages and depredations of robbers, housebreakers, and other lawless sons of violence, committed within their own respective districts, would of course be stimulated, by the urgent spur of private interest, to yield up a small portion of their leisure to the necessary exercise of arms and training, for their mutual defence against every act of violence and injustice; and on this ancient provision of the common law was apparently founded the legality of levying taxes on the inhabitants of London and Middlesex, to make good the damages occasioned by the alarming riots in the year 1780. We ought, therefore, by no means to repine at the late judgment of the courts, whereby the riot tax, to make good the damages, was deemed legal, even before the act was made for levying it; but, on the contrary, to promote, as much as possible, a still more effectual and complete revival of that most excellent institution of the common law, that it may be constantly and regularly enforced (even in less and more ordinary cases of robbery, housebreaking, &c.) for the immediate recovery of all damages and losses by any act of violence whatsoever: the value of the

damages should be levied on ten housekeepers that are the nearest inhabitants to the spot where the violence or robbery was committed. If the ten nearest housekeepers should not be able to make good the damage, then ten times ten of the nearest housekeepers (or the hundred) ought to be assessed; and so on, if necessary, to the whole county. Such was the ancient usage by the common law, whereby all housekeepers would be prompted by their own private interest to associate in arms with their respective neighbours to suppress every act of unjust violence, and to maintain the public peace.

In the various accounts of these ancient free-boroughs, or tithings, they are sometimes mentioned as consisting only of ten men; at other times, as consisting of ten men and their families: and therefore as all males, from fifteen to sixty years of age, are required by law "to have arms and to be duly exercised therein," the number of males in a tithing of the latter description would amount to about thirty, (the proper number for a platoon,) at the rate of three males to a family, including sons, lodgers, apprentices, journeymen, porters, and servants; though this must vary in different neighbourhoods, according to the nature of the trades and occupations carried on therein.

Archbishops, bishops, earls, barons, and other

great men, having their own proper officers, serjeants, esquires, butlers, confectioners, bakers, &c., (see 21st law of King Edward,) were supposed to have a free-borough within their own households, and were therefore not included in the ordinary tithings, " because they were a sufficient assurance for themselves and for their menial servants; no less than the ten were, one for another, in the ordinary dozeins." (See Cowell's Interpreter, on the word " Friburgh.") This due exemption of the great men from the obligation of entering into the ordinary decenaries, I wish to be particularly noticed, because it may prevent the opposition of some high-minded persons, who would think themselves degraded, perhaps, by an universal establishment of the tithings. On the quotation last made from Dr. Cowell, it is necessary to remark, that the word "dozeins" is manifestly used for decenus, or decenna; but I cannot find that these legal societies, or associations of neighbours, ever consisted of dozeins, or dozens, in the ordinary sense of that term. They are so very frequently called dozeins, merely, I presume, by corruption of speech; so that the etymology of the English word " dozen" is not from duodecim, as one would naturally suppose, but from decenna and dizaine, the Latin and French appellations of the tithings, consisting of

ten men ; or rather ten men and their families, as before remarked. But in the revival of decenaries, which I wish to promote, the number of persons in each free-borough, or decenary, (whether it shall consist of ten housekeepers, with their families and servants, or only of ten men,) must be determined by the votes of the inhabitants themselves in every neighbourhood, at their several general meetings, folk-motes, or ward-motes. This is because the service must be perfectly voluntary ; for though the arrangement of the people into decenary companies was actually "ordained by the ancient laws of this realm," and was required by the common law for the whole kingdom, yet one of the most eminent common-law writers of his time (Mr. William Lambard) mentions the formation of these decenary companies as being the free act of the people themselves in every neighbourhood : for, according to him, the ancient usage was, that "all free-born men should cast themselves into several companies by tenne in eche companie," &c. (Duties of Constables, &c. p. 7.) Our ancestors could not have had any more urgent inducement to render this service voluntary, than what the present generation actually feels (alluding to the riots of 1780 ;) for Mr. Lambard informs us just before, that "it was ordained for the more sure keeping of the peace, and for the

better repressing of thieves and robbers, that all free-born men should cast themselves into several companies," &c. The reason of this law, therefore, on which the force of it should depend, does not only still subsist, but is certainly as forcible and urgent as ever. Though this excellent custom was become almost obsolete by neglect and disuse, yet so long ago as the reign of Queen Elizabeth, it was still considered as a legal institution, required by the common law; and the renewal of it was recommended as easy and most efficacious for the maintenance of the public peace: "whereof" (says the learned Lambard, speaking of the ancient office of borsholders, tithing-men, &c.) "there is yet some show or remnant in our leets, or law days; but if the very substance thereof were thoroughly performed, then should the peace of the land be much better maintained." (Duties of Constables, &c. p. 9.) There is no doubt but the effects would be as happy and beneficial as when the tithings were first established by Alfred; for all the old historians agree, that an entire stop to all robbery and violence was immediately effected by this regulation. In the Chronicon of John Brompton we are informed, that "although laws in times of war are silent, yet King Alfred, in the midst of the clashing of arms, made laws, and instituted the centuries, which they call hundreds,

and the decenaries, which they call trithings," (he should have said tithings,) "maintained peace amongst his own subjects, and chastised robbers in such sort, that he commanded golden bracelets to be hung up in the roads, divided into four ways, which might brave the avidity of passengers, whilst there were none who durst snatch them away." Speed also tells us, from William Malmsbury, that—"His kingdom hee (Alfred) "likewise divided into shires, hundreds, and tithings, for the better ordering and administering of justice, and for the abandoning of theeves, which had formerly increased by the meanes of long warres; whereby, notwithstanding the multitudes of souldiers continually imploied, it is reported that a virgin might travaile alone in his daies, through all his dominions, without any violence offered; and that bracelets of gold were hanged in the high waies, and no man so hardy as to take them away." (p. 358.)

The ten householders, or masters of families, from whose precise number of ten the numerical appellations of decenaries, tithings, and dozeins, are manifestly derived, were themselves also individually distinguished by the title of deciners, from the youths, journeymen, lodgers, and servants, that were included, and respectively pledged by the householders in the several decenaries.

A right understanding and due application of the term deciner is necessary to what follows; I hope, therefore, that my readers will not think it too tedious to attend a little to the investigation of the word, that we may clear it from the indiscriminate use which some law writers have made of it. "The circuit thereof," says Dr. Cowel, in his Interpreter, speaking of Frankpledge, "was called decenna, because it commonly consisted of ten households: and every particular person, thus mutually bound for himself and his neighbours, was called decennier," (more commonly, I believe, decener, and afterwards, by corruption, dozener,) "because he was of one decenna or other." But this reason is not sufficiently accurate. The youths, servants, &c., were all "of one decenna or other," yet they were not decenners, though they were also mutually bound by oath for their good behaviour in their respective decenaries; but those men only were properly deciners, who were more immediately responsible for all the rest, by being the masters of the several families,—viz., only the ten householders in every tithing who paid scot and lot, and were answerable for the payment of all national as well as provincial and parochial burthens. These only were the men who had a judicial capacity, and were called altogether by the chief freeborg, or headborough,

on all occasions, to consult and determine, on every question or extraordinary business, within the extent of their division. All the individuals of the division, indeed, were suitors in the tithing court, and might there be present, and amenable thereto for offences; for the decenna, or tithing courts, were of admirable use in promoting justice, and deciding differences and quarrels amongst neighbours. The learned author of the Notes on Fortescue, (folio edit. in 1741, p. 106,) speaking of "the court of the free-borough or tithing," adds, "wherein" (says he) "the tithingman, or headborough, was the judge." They are intituled, in the laws of the Confessor, "justiciarii," (justices;) for such was their jurisdiction and office within their tithing. It is necessary, however, for the proper understanding of the chapter wherein this is mentioned, to be previously informed that the Latin noun, "friborgus," of the masculine gender, does not properly signify a free-borough, tithing, or association of ten men, but rather one individual free-borgess of that society; but when the society or association itself is to be collectively understood, the word is generally, though not always, expressed in the neuter gender, "friborgum," as Dr. Cowel rightly expresses in his Interpreter, on the word froborgh, alias fridburgh, &c.

It is also manifest, by the explanation of titles given by Lambard, that nine persons of the tithing were intituled freoborh—that is, free-sureties; "whom we call frank-pledges;" and that "the tenth man was called teothungmon," that is, "decurio," (or tithingman,) and that "others called him tienheofod," (head of ten,) and "others, again, freoborhes-heofod," (free-burgess-head,) or "chief-pledge." A comparison of these terms with the terms mentioned in the old laws of St. Edward, Nos. 20 and 32, and the relation these terms bear respectively to each other, will clearly demonstrate that the "justitiarios super quosque decem friborgos," therein mentioned, were no other than tithingmen, the heads, or chiefs, of each decenary, who in Latin were called decani, or deans. That the "decem-friborgos," mentioned in that sentence, do not signify ten tithings, or boroughs, (which would amount to a hundred-court,) but only ten individuals, the ten householders, or deceners, of the tithing, each of whom Lambard calls freoborh, or free-burgess. This being understood, we may safely proceed to speak of the authority of the tithingmen in their respective divisions. "These" (according to the Saxon laws collected by King Edward the Confessor) "tried causes among the villages and neighbours, and according to conviction," (or forfeiture on trial,) "took

satisfaction," (or damages,) " and settled agreements, concerning pastures, meadows, harvests; as also litigations between neighbours, and innumerable such like disputes, which infest the weakness of human nature, and continually annoy it. But, when causes of more consequence occurred, they were referred to their superior justiciaries, whom the wise men" (or national council) " had appointed over them—that is, over ten deans," (or chiefs of tens,) " whom we may call centurions, or centenarii," (hundreders,) " because they had jurisdiction over an hundred friborgs"—(i. e., an hundred free-burgesses or deciners.)

Thus it is manifest that the hundreders, or high constables, were also justiciaries; so that every hundred householders throughout the kingdom had a complete establishment of civil officers, (i.e., a high constable and ten constables,) all of whom were justiciaries within their respective jurisdictions, to preserve the peace and settle differences amongst themselves and their respective families. Though each or all of these officers sat as judges or presidents in their respective courts, yet their power was duly limited by the opinion and determination of the householders or deciners, from whom the juries (the real judges of the causes) were regularly chosen, and still are, to this day, in most cities and trading towns

(as in London), without regard to any other qualification than that of their being housekeepers of the vicinage, indifferent to the parties, of unblameable character and sufficient substance, not to be suspected of undue bias; or, as it is expressed in an old form, "such as be next neighbours, most sufficient, and least suspicious." In the act of 21 Edward I. there is an express clause, reserving the ancient rights of juries to cities and burghs. And Mr. Hawkins, on mentioning this and another statute, (2 West,) remarks thereupon, "that neither by common law, nor by the statutes, there was any necessity in proceedings before justices in Eyre, &c., that petit jurors should be freeholders; and if so," (says he,) "it seems probable that there is no greater necessity that grand jurors, making an inquiry before them, should be freeholders; and if a grand juror before such justices need not be a freeholder, why should there be a greater necessity that a grand juror before other justices should be a freeholder?" &c.—Pleas of the Crown, 2nd book, chap. 25, p. 217. And he repeats this doctrine in chap. 43, sect. 12, "That at the common law there was no necessity that jurors should have any freehold, as to inquests before justices in Eyre, or in cities or burghs," &c., whereby the judicial capacity of the housekeepers, or deciners, without any qualification as

landowners, is, I trust, sufficiently established. We are misled, also, in the sense of the word deciner, when it is applied (as by Cowell) in a peculiar manner to the chief, or head, of a tithing. "It signifieth" (says he), "in the ancient monuments of the law, such as were wont to have the oversight and check of ten fribourgs for the maintenance of the king's peace." But the chief of the ten, as I have already shewn, had his proper titles of headborough and tithingman; and, though each chief was always a deciner, as being himself one of the ten incorporated householders, yet he had no peculiar title of deciner any otherwise than as being the chief of the deciners in his division. The youths and others that were not householders, were pledged by the deciners, as appears by Briton, cap. 12:—"Volons nous que trestous ceux de XIV. ans desouthe nous facent le serement, &c., et velons que toutz soient en dizeyne, et pleuys par descyners, sauve gentz de religion, clers et chevaliers, et leur fitz eynes, et femes." We will that all those which are fourteen years old shall make oath to us, &c.; and that all shall be in tithings, and pledged by deciners," &c. The law could not mean that all should be pledged by the respective headboroughs alone, but, certainly, by the householders of each decenary. And Dr. Cowell himself, also, in the latter part of that article, says, "that decennier

is not now used for the chief man of a dozen, but for him that is sworn to the king's peace; neither in this is he sufficiently accurate, for the being sworn to the king's peace did not constitute a deciner, in the proper sense of the word, though it included the person sworn in the jurisdiction of a decenary. The title of deciner could not properly belong to any but the ten householders themselves, from whose number his division was formerly called tienmantale, id est (says Lambard), "Decemvirale collegium," a society of ten men. Nine of these, as he declares, were called freoborh (free burgess), i.e., free pledges; and the tenth was called teothungmon (tithingman), i.e., decurio. Now, it seems the office and title of decurio were used in Britain, long before the Saxon kings, by the Romans, as well in their civil as military establishments; and the learned author of the notes on the folio edition of Fortescue's excellent tract, de Laudibus Legum Angliæ, observes, in p. 31, "that the Romans had their laws in such parts of this land as they had their most civil government in; I mean" (says he), "in colonies hither deduced. For every colony was but an image of the mother city, with like holy rites, like courts, laws, &c.; and for the most part with duumviri instead of consuls, and ædiles and decuriones, in lieu of a senate; and it is clear" (says he) "that

divers colonies from Rome were in Britain, as at Camelodonum, now Malden, in Essex," &c. The consideration of this circumstance enables us to propose a much more probable etymology of the English word denizen than what is generally assigned. Lord Coke supposes it from "deins nee, born within;" and also from donaison, "because the freedom is given by the king." But a learned writer (Davies) asserts, that "denizen is a British law term, which the Saxons and Angles found here and retained." It could not, therefore, be derived from the French tongue, before that modern language was known or even formed. Neither is the French etymology of it at all satisfactory, because it seems very uncouth, and not sufficiently similar in sound to the word. But if we derive the word immediately from the Latin, it will appear more natural and easy, both in sound and sense; for the word deni being derived à decem pro deceni, is a proper adjective, expressive of its relation to the number of ten persons in a decenary; and as the Romans had their decuriones, and, consequently, decenaries also, a proper Latin verb, to express the initiation or introduction of a person to the privileges and franchises of a decenary, is very naturally formed from the word deni—viz., denizo; which verb and its derivatives are frequently used by our law writers when they

speak of the admission of aliens to the franchises of the native inhabitants; and the said franchises being maintained in ancient times by mutual frankpledge in the several decenaries, it is obvious that the participle "denizatus," which frequently occurs, and the derived noun-substantive "denizatio," are applied in such cases in their proper Latin sense; though the law writers, who used them, have overlooked that most obvious etymology, which is confirmed by the sound, as well as the true Latin sense of those terms.

Lord Coke says, "Denizen is taken for an alien born, that is unfranchised, or denizated, by letters patent, whereby the king doth grant unto him, that in all things he should be reputed, esteemed, held, and governed, as our liege subject, sprung up" (from his ancestors) "within our said kingdom of England, and not otherwise, nor in any other manner." And he cites Dier, in the same page, 1 Inst. lib. 2, p. 129, respecting this ligeance of denizens, "Ligentia domino regi debita, &c. Data (est) aut per denizationem, aut per naturalizationem." When foreigners, therefore, were admitted to the privileges and franchises of Englishmen, they became the king's liege subjects, "esse ad fidem regi Anglia," and were of course denizated, or admitted to be members of some decenary, and would be sworn to

their ligeance, in common with other subjects, in the court of frank-pledge; and if the denizated stranger rented a house, and paid scot and lot, and other rates, he became a frioborh, or free burgess, having a right to vote for representatives in the national council; so that Lord Coke was certainly right in using the term infranchised and denizatus as synonymous, for the "renting of a house, at a certain rent, by the year," is the ancient legal description of burghage-tenure. "It is called burgh because it sendeth burgesses to parliament." And, though this is not the proper derivation of the word, it is certainly the usage of boroughs, and as well as the right of all burgesses.

"They that have tenements" (says Littleton) "within the burrough (or burgh) hold of the king their tenements; and every tenant for his tenement ought to pay to the king a certain rent by the year."—1 Inst. lib. 2, c. 10, sect. 162. The next section declares the same doctrine concerning those who rent of any other lord. "And the same manner is, where another lord, spiritual or temporal, is lord of such a burrough; and the tenants of the tenements, in such a burrough, hold of their lord to pay each of them, yearly, an annual rent."—Sect. 163. "And it is called tenure in burgage," (says Littleton,) "for that the tenements within the burrough be holden of the

lord of the burrough by certaine rent, &c. And it is, to wit, that the ancient townes, called burroughes, be the most ancient townes that be in England; for the townes that now be cities or counties in old time were boroughes, and called boroughes; for, of such old townes, called boroughes, came the burgesses of the parliament, when the king hath summoned his parliament."—Sect. 164.

Now, this description of paying "an annual rent, or holding tenements by certain rent by the year," is the proper distinction of a tenant in burgage from a tenant at will," because the latter hath no certain nor sure estate," (says Littleton,) "for the lessor may put him out at what time it pleaseth him."—Lib. 1, c. viii. § 68. "Otherwise it is, if tenant for years which knoweth the end of his terme, doth save the land, &c." And those persons who agree with the owners of their houses at a certain rent, howsoever small, for any fixed time, if it be but for half a year, or even for a quarter of a year, are, nevertheless, to be esteemed, in law, as "tenants for years," ("quod tenent ad terminum annorum."—Lib. 1, c. vii. sec. 67.) For they enjoy a free and certain possession to the end of the agreed term, so that their tenure is perfectly free; and they have sometimes been intituled, "Liberi tenentes" and freeholders, in contradistinction to tenants in

villanage, though they are, indeed, freeholders in a very different sense from the common acceptation of the term freeholders, now applied only to those who are properly landowners; which would therefore be a less equivocal term for them; the others being also freeholders, or free tenants, though in a less durable tenure. But their ancient indisputable right of sending burgesses to parliament, proves their freedom as members of the community. In the borough of Southwark, and many others to this day, the renters of tenements, or housekeepers in general, paying scot and lot, are the electors of the deputies to parliament, so that the doctrine is unquestionable. And in the city of Westminster, and several other ancient cities, the same right, by burgage-tenure, of voting for representatives, prevails to this day, because all cities were originally deemed boroughs, as being the habitations of freeborges, or free pledges—i.e., the associated householders, who were mutually pledged to maintain the public peace, and defend and support the due execution of the laws.

In all these various divisions of the people, regular courts were anciently held for the maintenance of peace and right, and for adjusting all differences amongst neighbours, without expense; for there was no cause or contest of such magnitude and importance, for which a popular court

of proportionable dignity could not be found in the larger divisions of wappentakes, tithings, and shires, to adjust and determine it; whereby tedious and vexatious lawsuits, and the ruinous expenses attending them, were happily avoided. In like manner, the general assemblies, or congregations, held in the gates of the Israelites, while under the theocracy, were esteemed courts for justice and judgment; wherein presided judges and officers that were freely elected by the inhabitants of each city or district; and the same reasonable mode of settling private differences by the congregation (or church) was not unknown, even among heathen nations. The people of Ephesus, it seems, retained this salutary constitution of popular liberty, even when under the yoke of the Roman Beast; and had a power of holding popular assemblies, (called ecclesia, or church,) for resolving difficult questions and disputes between individuals, besides the ordinary courts of justice, under the Roman deputies, for common offences. This appears by the speech of the town-clerk of Ephesus, (recorded in Acts, xix. 37—39,) who, after he had appeased the tumult and confusion of the people that had hastily run together, without notice or summons to specify the cause of assembling, said, "Ye have brought hither these men" (two of Paul's companions whom they had seized) "which are neither

robbers of churches, nor yet blasphemers of your goddess. Wherefore, if Demetrius, and the craftsmen which are with him, have a matter against any man, the law is open," (or rather the court-days are held,) "and there are deputies: let them implead one another. But, if ye inquire anything concerning other matters, it shall be determined in a lawful assembly"—i.e., in a congregation convocated, or called together, in due form and order, by the proper officers; this having been neglected in the then last hasty and tumultuous assembling of the people, which occasioned the Ephesian town-clerk's harangue. So perfectly unexceptionable is this mode of determining private quarrels and contests, without expense, by a popular assembly, that it seems clearly to be pointed out for the practice of Christians, in the commands even of our Lord himself, on the case of a trespassing brother, Matt. xviii. 15—17: "Go and tell him his fault," (said our Lord,) "between thee and him alone: if he shall hear thee, thou hast gained thy brother. But if he will not hear, take with thee one or two more, &c. And, if he shall neglect to hear them, tell it unto the church" (not unto the prelate of the church, as popish writers contend, therein grossly perverting the Divine command by their vain traditions,) but "unto the congregation," including the laity as well as

clergy. And the apostle Paul reproved the Corinthians for carrying their contests about worldly matters (*βιωτικα*, things pertaining to this life) before the established imperial courts of justice, where unbelievers presided; which contests ought to have been judged amongst themselves by the congregation of Christian brethren, (1 Cor. vi. 1—6.) But, after the regular establishment of Christianity in this or any other nation, the several popular courts of the tithings, or hundreds, or thousands, or counties, duly convened, are the proper congregations of Christian brethren for every neighbourhood; and in ancient times all those courts where the sheriffs held their tourns, (or rotulatory visitations, took cognizance not only of *βιωτικα*, worldly matters, but also more especially of ecclesiastical cases, as being the first or most important objects of their attention; for thus the order of cases falling under their cognizance is stated (as Lord Coke informs us, 4 Inst. p. 259 and 260) in the Red Book, "inter leges H. I. cap. 8, de generalibus placitis comitatuum—i.e.," (says he,) "as well of the tourn" (beforementioned) "as of the country courts," viz.:—

"Let the due laws of true Christianity be first discussed; secondly, the pleas of the king; lastly, let the causes of individuals be despatched with suitable redress," (or "satisfactions.")

The bishops, as well as the earls, lord-lieutenants, sheriffs, hundreders, aldermen, mayors, magistrates, &c., presided in these ancient courts of the congregation, whereby they were enabled to enforce the said "due laws of true Christianity" against all offenders, (whether clergy or laity,) through the united power of the congregation, which regularly assembled at certain fixed places, and at stated times, (4 Inst. c. 53, p. 260;) the united power of many being sufficiently effectual to resist and humble the most audacious individuals, howsoever great or opulent: whereas, at present, the most barefaced enormities of immorality and irreligion are beyond the reach of ecclesiastical correction, the episcopal authority (and more especially that which ought to restrain the laity) being reduced almost to nothing, through the fallacious enervating innovations and usurpations of the anti-christian church of Rome, the grand enemy to the true limited episcopacy; for the popish bishops, by continually grasping at undue power, at length obtained in England a removal of all ecclesiastical causes and religious questions respecting morality as well as doctrine, from the cognizance of our congregational courts of common law to their own consistories, to be holden at such times, and at such places, as they themselves should be pleased to direct; so that when

and where were equally unlimited and uncertain, and the causes were then to be adjudged according to foreign canons and decretals unknown to the people! More effectual means could not be devised for reducing the nation to the most abject slavery under the papal usurpation! To accomplish this baneful purpose, a fictitious charter was produced, bearing the title of "Willielmus gratia Dei Rex Anglorum," &c., that it might pass for a deed of King William, commonly called the Conqueror; but, even supposing it to have been authentic, yet, as it was neither published nor known till near three hundred years after the death of William, viz., not till the second year of King Richard II., anno 1378, the invalidity of such an instrument, to alter "the due process of the law," must be sufficiently obvious: at the last-mentioned period, however, this pretended charter of William was enrolled, it seems, for the first time, viz., in 2nd Richard II. "Being never heard of before," as Lord Coke remarks, (4 Inst. c. 83, p. 259;) and the same learned author has produced ample proof, from the Red Book before quoted, that "ecclesiastical causes were handled in the tourn" (the sheriff's circuit, or circular visitation of the hundreds,) "in the reign of Henry I., long after the said supposed charter. And certain it is," says he, "that the bishop's consistories were erected, and

causes ecclesiastical removed from the tourn to the consistory, after the making of the said Red Book. Ideo penes lectorem sit judicium." It cannot, therefore, be denied that this wicked, nay, I may justly call it diabolical, encroachment of the papal power on the most sacred rights of the people was effected (like most other innovations of the apostate church) by the help of an abominable lie, by a forgery so gross and obviously fraudulent and false, that the success of it cannot reasonably be attributed to any other causes than (first, with respect to the deceived) to that kind of judicial blindness which darkens the perceptions of all persons who neglect the holy scriptures, and "receive not the love of the truth," after being fairly warned, that "for this cause God shall send them strong delusion, that they should believe a lie." (2 Thess. ii. 11.) And (secondly, with respect to the deceivers) it may fairly be attributed to the consequent prevalence of "the working of Satan, with all power, and signs, and lying wonders, and with all deceivableness of unrighteousness," &c., (2 Thess. ii. 3—12,) a prevalence and success which God permits in his just judgment against national delinquency; for "deceivableness of unrighteousness" are terms so clearly descriptive of the above-mentioned abominable cheat against the rights of our congregational courts, that "the

father of lies" may well be deemed the first suggestor of it, as well as an active promoter of its success; so that his visible partners in the deceit, and their church, (the power of which, in this kingdom, was then most essentially promoted by it,) must necessarily be stigmatized by their share of labour and profit in so palpable a fraud; for as "no lie is of the truth," (1 John, ii. 21,) "the deceivableness of unrighteousness" before mentioned, and its baneful success, afford, as in many other instances, an unquestionable token of their apostasy from the King of righteousness, and of their consequent fellowship with the prince of this world, who "hath nothing in Christ," (John, xiv. 30;) "for what fellowship hath righteousness with unrighteousness? and what communion hath light with darkness? and what concord hath Christ with Belial?" (2 Cor. vi. 14, 15.)

By this miserable forgery, the courts of the congregation in England were deprived of the presence and aid of their bishops in public judgment, a presence and aid of the utmost importance to the welfare of the people and of the whole commonwealth, whilst the people retained any share of their just and ancient right in the election of bishops; but little to be regretted when the bishops, through the total perversion of that right, (by the gradual encroachments of monks, popes, and kings,) ceased to have that

intimate connexion with the people and their interest, which their predecessors in office were wont to acquire so naturally by popular elections. But the later bishops, chosen by the usurpers of episcopal elections for very different purposes, and selected, for the most part, from the monastic orders, then falsely called regular, (instead of the regular parochial priesthood,) did as naturally become the dangerous advocates for very different interests, the interests of their usurping constituents, whether monkish or monarchical, and more especially about the time of Richard II., when the notorious forgery above mentioned was committed.

The courts of the congregation were also, by this detestable forgery, cheated of the power of excommunicating irreligious and profane persons from their own body or society; a power most essentially their own, but which, lodged where it is at present, merely with the bishops of a reformed church, (who want it not for undue purposes like the papal prelates,) neither promotes episcopal dignity nor due ecclesiastical authority, because ecclesiastical judgments and censures, by flowing in an improper channel, have excited, and ever will excite, the jealousy of the people; and, of course, they have been generally thwarted and opposed in our courts of common law, (through a just jealousy in the courts of the

bishop's separate consistories,) and have sometimes been reversed and annulled with heavy costs and damages against the ecclesiastical judge, or, perhaps, (what is worse,) against his executors and innocent family after his death; by which means the necessary control of vice and immorality is weakened, and ecclesiastical censures, howsoever just and proper in themselves, are but too little regarded by rich and opulent offenders that can spare money for litigation; so that the public is grievously injured by infectious examples of depravity, without any effectual means of restraining them. But it would be far otherwise if the congregational courts were restored to their ancient powers of acting by the common law, with cognizance of all causes, ecclesiastical as well as civil, which formerly they enjoyed, as I have already proved; for as law "was deemed the dictate of reason," and "reason" justly deemed "a ray of divine light" common to all men of common sense, as being derived and inherited from our first common parents, so it followed, of course, that, though many express laws for particular occasions, and likewise various customs and usages, proved by legal precedents, formed a part of our common law, (of which the reverend sages of the law and regular students were undoubtedly the properest judges, insomuch that the business

of the courts could not be carried on without their assistance,) yet by far the greatest and most essential part of the common law consisted in the exercise of reason, duly to discern between good and evil, between right and wrong, between justice and injustice, in all cases whatsoever, by the general principles of natural right, and by those also which may be drawn from God's revelation in the Holy Scriptures, which is declared to be the second foundation of our law. And as the members of a Christian community are required by the Scriptures to have their "senses exercised, through habit," or use, "to discern both good and evil;" such assemblies, with the assistance of the sages and regular students of the law, were surely competent to determine whether any offence complained of or presented to them was really either immoral in itself, or a nuisance, in any respect, to the community; and in either case "the law will find a remedy," be the particular circumstances of the case ever so new or uncommon, for justice ought not to be foiled for the want of an *express* statute, or a precedent for proceeding, as at present; but the law is required to be effective, and all men, however great, were made to regard it by amerciaments, or mulcts, in proportion as well to the crime as to the wealth or substance of the offender, the contenement of the landowner being

duly considered, the merchandize of the merchant and the waynage of the husbandman. (See Magna Charta, cap. 14.)

There is no possible case, either of immorality or even inconvenience, but what is within the reach and correction of the common law; for it is a rule therein that nothing which is against reason is lawful," (Co. Litt., 97 b, and Grounds and Rudiments 228;) and, surely, everything that is immoral is "against reason;" and again, by another rule, "nothing that is inconvenient is lawful." (Idem.) And ecclesiastical cases were also particularly regarded by it; because whatever things related to the advancement of religion, were, in law, deemed of the highest consideration; so that if the congregational courts were duly reformed and re-established, the jurisdiction and cognizance of all ecclesiastical cases therein, according to ancient usage, would not only promote morality, but also, by strengthening ecclesiastical discipline, would really enlarge the authority and dignity of episcopacy; and if to this the clergy and people were also reinstated in their ancient right, as Christians, freely to elect their own bishops, [duly observing the scriptural precautions against party divisions and tumults—viz., first, to elect two unexceptionable or blameless presbyters by the common suffrage of all the people, or congregation, (or, at least, of all

the episcopal communicants in each diocese that should demand their right of suffrage,) and then, after solemn prayer, to decide by lot, before God and the congregation, the appointment of one of the elected presbyters, according to the authentic precedent described in Acts, i. 15—26,] the bishops would obtain such a natural connexion with the people, as great popular officers, (which they would really be by a popular election, truly ecclesiastical, in the true sense of the word "ecclesia," or congregation, the surest foundation for popular respect and authority,) in addition to their proper dignity, as being of the highest order of God's ministers in religion, that they would effectually become what the common law entitles them—viz., (not merely "robur ecclesiæ," the strength of the church, but in a more enlarged sense of the word "ecclesia," including our whole national community or commonwealth of Christians,) "robur rei-publicæ," the strength of the commonwealth. (Jenks, Cent., p. 56.) And though these ancient congregational courts have unhappily fallen into disuse, yet the law had duly provided for their continuance by establishing an annual court, called the View of Frankpledge, wherein the association and due arrangement of the whole body of the people, in their proper decinal divisions, were intended to be completed and re-

newed, one of the constant articles of inquiry being, whether the decenaries were complete. "Et fiant Visus de Franco-plegio, sic quod pax inviolabiliter observetur, et quod decenna integra sint, sicut tempore Henrici Regis prædicti esse consueverunt." (Fleta, lib. ii. c. 52.)

Fleta, in this chapter, expressly quotes Magna Charta, and gives a transcript of the 35th chapter of it, word for word, with very little variation, except what may enable us to correct the common printed copies of that noble charter, wherein we frequently find the word "trithinga" inserted, instead of "tithinga," the proper word, which is manifest from the various reading in Fleta of the same import, though in the plural number—viz., "decenna"—i. e., tithings. The English version, commonly printed in the Statute Books, has also, indeed, the word "trything" instead of tithing; and Sir Edward Coke, in his commentary on that chapter, calls the word, three or four times, "trithinga," though he has copied it right in the chapter itself. (See his 2nd Inst. p. 69.) "Et quod tithinga, teneatur integra sicut esse consuevit," &c.—"and let the tithing be kept entire, as it has been accustomed to be." I have a copy of Magna Charta, printed for the Stationers' Company, in 1618, which has the same true reading—"et quod tithinga teneatur integra," &c.; and this

reading is still further proved by Sir Edward Coke's Commentary upon it. "Trithinga, or tithinga," says he, "is expounded for theothinga, which signifieth the Frankpledge of tenne households," &c. It is manifest, therefore, that the maintaining the tithings entire is expressly ordained by Magna Charta,; so that we have statute law, (the most respectable statute that was ever made,) as well as common law, to justify the re-establishment of the tithings throughout the kingdom, without having the least need to make a new act for that purpose. It is already the law, and the sheriffs and other magistrates who do not enforce it, by holding the annual View of Frankpledge for the legal purpose of maintaining the tithings entire, as directed by Magna Charta, are certainly deficient in their duty, and ought to be duly amerced by the crown for their neglect of the most beneficial law, both to the king and to the people, that was ever made; and the more especially ought they to be amerced if any riots or notorious robberies shall have happened within their respective jurisdictions, during the time of their being in office, because these, in all human probability, would have been prevented, as well as the damages occasioned by them, had the sheriffs done their duty in completing the tithings, at an annual View of Frankpledge, as the law directs. See the whole

every particular person thus mutually bound for himselfe and his neighbours was called decennier, because he was of one decenna or another. This custome was so kept, that the sheriffes at every county-court, did, from time to time, take oathes of young ones as they grew to the age of fourteen years, and see that he were combined in one dozen or another: whereupon this branch of the sheriffe's authority was called Visus Franciplegii, View of Frankpledge. See the statute for View of Frankpledge, made anno 18 Ed. 2. See Decennier, Leete, View of Frankpledge, and Freoborghe. That this discipline is borrowed by us of the Romane emperours, or rather Lombards, appeareth most manifestly in the 2d booke of Feuds, cap. 53; upon which, if you read Hotoman with those authors that hee there recordeth, you will think your labour well bestowed. Read more of this—viz., what articles were wont to be inquired of in this court, in Horne's Mirrour of Justice, lib. 1, cap. de la Veneu des Francspleges; and what these articles were in antient times, see in Fleta, lib. 2, cap. 52."

The title in Horne's Mirrour is not, as Dr. Cowell has said, "De la Venu," &c., but "De Viewes de Franckpledge."—See cap. 1, sect. xvii. This chapter contains many things worthy to be known, and which also relate particularly to the

subject of this book, and therefore I think myself obliged to recite it for the sake of those who have not a copy of the original. In doing this, however, I propose to follow the common English translation, printed in 1646, making such alterations as a comparison with the French copy, printed in 1642, may seem to require.

"Of Viewes of Franckpledge. Of these first assemblies it was also ordained, that every hundred"-er "doe make a common meeting once in the yeere," and "not only of the freeholders," or fief-tenants, "but of all persons within the hundred, strangers and denizens of the age of twelve yeeres and upwards, except of archbishops, bishops, abbots, priors," and all "religious persons, and all clerkes," (clergy,) "earls, barons, and knights, feme coverts," (married women,) "deaf and dumb, sick, idiots, infected persons, and those who are not in any dozein," rather— "and those who are elsewhere included in a decenary," for that is the proper exception intended, "to enquire of the points aforesaid, and of the articles following, and not by villanies," (meaning villeins or bondmen,) "nor by women, but by the afferment" or verdict of twelve "freemen at the least; for a villaine" (meaning a villein, i.e., a bondman or serf) "cannot indict a free-man, nor any other who is not receivable to doe suite in the same courts; and therefore it

was anciently ordained; that none should remaine in the realme if he were not in some decenny" (or tithing) "and pledge"-ed "of freemen: it belongeth also to hundredours" (the chiefs of hundreds, who are high-constables) "once a year to view the Frankpledges, and the pledg"-ed, "and therefore are the viewes called the View of Frankpledges;" or rather, and for this are such viewes called the Views of Frankpledge.

The articles are these:—

1. "By the oathes you have taken, you shall declare whether all they who ought, do appeare or not." In the supposed statute of 18th Edward II. before-mentioned, the first article is, "You shall say unto us, by the oath that you have made, if all the jurors that owe suit to this court be come, and which not." In both copies the presence of the jury is necessarily to be understood, as appears by the mention of their oaths; and of course we must suppose a previous summons, or impannel, to be the foundation of the business; so that it now seems a very proper question to begin with, as well at Views of Frankpledge as at all other court-leets, or trithings, and, likewise, at hundred-courts—viz., "If all the jurors be come, &c., and which not." That the absentees may be duly amerced if they cannot assign a legal essoine, or admissible excuse.

2. "If all the freemen of the hundred, or of the "fee," (fief or manour,) "be present."

3. "If all the Frankpledges" (or, rather, the chief pledges, tithingmen, or headboroughs,) "have their dozeins," decenaries, or tithings, "entire" (or complete,) "and all those" whom they have pledged.

4. "If all those of the hundred, or of the fee," (or fief,) "of the age of twelve years and above, have sworn fealty to the king; and of the receivers" of others wittingly or knowingly.

5. "Of all blood" feloniously "shed" [to which I will add a necessary article of inquiry from the imaginary statute of 18th Edward II.—viz., "Of" (any) "wound made"—"et de play fait"—(Edit. of 1529)—which in the common version is falsely rendered—"and of frays made"—however, even frays, though there be no wounds in consequence of them, may, as breaches of the peace, be punished by the common law, which is competent to find effectual remedies for all immoralities and nuisances,] "of hue and cry wrongfully leavied, or rightfully leavied, or rightfully leavied and not duly pursued; and of the names of" those who pursued, and "of all mortal" sinners of all kinds; as of the principals, also, of the accessories.

6. "Of all exiles, outlaws, waives, and banished persons returned, and who have since received

them, and of those who have been adjudged to death or abjured the realm."

7. "Of" Christians that are "usurers, and of all their goods."

8. "Of treasure trove," (i.e., found,) wrecks, waifes, estreyes, "and of every purpresture and encroachment upon the king, or upon his dignity."

9. "Of all wrongs done by the king's officers and others to the common people."

10. "And all purprestures" (or private encroachments) "in" (any) "place" (that is) "common," (or belonging to the public,) "in the land or in the water, or elsewhere."

11. "Of boundaries removed to the common nuisance of the people."

12. "Of every breach of the assize of bread beer, wine, clothes, weights, measures, beams bushels, gallons, ells, and yards, and of all false seals, and of those who have used them."

13. "And of those who have bought by one kind of measure, and sold by another kind, in deceit of merchants or buyers."

14. "Of the disturbers of framing lawful judgments, and of the framers of wrongfull judgements, and of the abettors and consenters thereunto."

15. "Of every wrongful detinue" or detaining

" of the body of a man, or other distresse," taking, or arrest, whether of body or goods.

16. " Of every false judgment given," for the other view, (meaning, perhaps, a retrospect to the preceding view,) " in the hundred or fee."

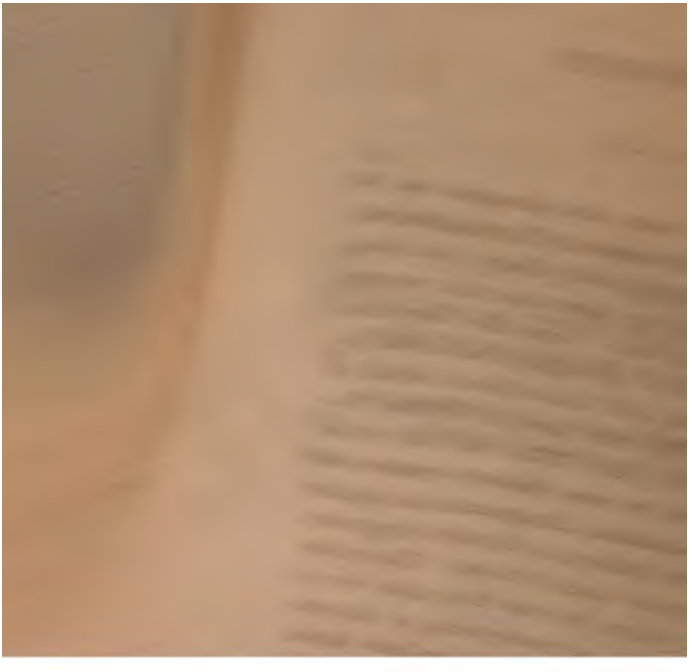
17. " Of every fore-stallment done in the common highway."

18. " Of " all " wrongfull replevies ;" i.e., either for regaining possession of goods that have been duly distrained, or for the bayling and setting at liberty men that have been duly committed to prison. This seems a very proper article of inquiry, though it is not obvious at first sight how it can be deemed a translation of the article as expressed in the French copy of Horn; but in the false statute of Frankpledge there is an express article for it, viz., " Des gentes emprisonnes, et puis lesses sauns garauntie." See No. 32 in the English copy of 18th Edward II. " Of persons imprisoned, and after let go without mainprise ;" i.e., without finding sureties, either as bail for their appearance, or as securities for the peace, and their future good behaviour.

19. " Of " all " wrongful recousses," or rescues.

20. " Of every outragious distresse in another fee, or in the market for a forraign contract."

21. " Of all bridges broken, and causies, wayes,



common bridges, and who ought for to repaire them."

22. "Of the makers of cloathes dwelling out of great towns in places forbidden," and "of tanners, and of curriers of leather." This article is very different from the French original, as well as from Fleta, and the supposed statute of Edward II.; and it is not easy to trace from any or all of these copies what has been originally intended. According to the old copy of the Myrrour, it should be "of the dressers (or patchers) of old cloths dwelling," &c., as if the object was to prevent a secret vamping-up of old, unsaleable, or damaged clothes, in order to pass them for new. In the articles of 18th Edward II., (No. 30,) it is "of all cloth-sellers and curriers of leather dwelling out of merchant-towns," which I should suppose to respect rather the markets than the dwellings of the cloth-sellers and curriers, viz., that all wholesale dealing in cloths and leather should be at public markets, established in great towns, like the famous cloth-markets at Leeds and Halifax, and like the great leather-market in Leadenhall, that proper market-prices may be regularly ascertained and known for the common benefit of the manufacturers as well as merchants.

And if this be really the intention of the article, it will enable us the better to understand

how far a man was formerly prohibited from exercising two several trades, viz., not any two trades in general, but only such trades as are so particularly connected together, that the exercise of both by one man might, in some degree, affect the public markets, and, like forestalling, prevent the fixing of regular market-prices; and even this limitation must be limited to such trades only which may affect the necessary articles of life; for so, I think, we may understand the examples recited by Fleta, "that the shoe-maker" (and, of course, all other consumers of leather, the sadler, the breeches-maker, the glove-maker) "shall not be a tanner," for, otherwise, the market-price for leather could not be so easily ascertained; "nor the tanner a butcher," (which would injure the fell-market, for pells and hides, and would give him an undue advantage over other tanners;) "nor the business of a taylor" to be exercised, perhaps, by a clothier, or manufacturer of cloth, which would injure the cloth-markets; but of this last article I am uncertain, for I acknowledge I do not understand what is meant by the abbreviated words in the original, and no article of inquiry ought to be formed on a doubtful question.

23. "Of butchers" and those "who sell unwholesome flesh for that which is sound;" and tainted or "spoiled," either through too long

keeping or want of cleanliness, "for well-conditioned."

24. "Of all those who sell corrupt wine for sound wine."

25. "And" (of those who sell) "beer" (or) "ale, raw, and not well brewed, for that which is good and wholesome."

26. "Of small larcenies," or thefts, commonly called "petit larceny," when the goods stolen do not exceed the value of twelve-pence.

27. "Of cutters of purses."

28. "Of those who suffer people to use any mysterie for reward or fee."

29. "Of receivers of thief-boot," i.e., receivers of "stolen goods."

30. "Of makers and haunters of false dice."

31. "Of outrageous tole-takers," i.e., those who take more toll than the law directs.

32. "Of all other" cheaters (or trickers) and "deceivers."

33. "Of all manner of conspirators."

34. "And of all other articles availeable for the destruction of offenders."

"And the presentments are to be sealed," continues the author of the Myrrour, "with the seals of the jurors, so that none by fraud doe increase or diminish them; and that which cannot be redressed there by these presentments is presentable at the sheriffes first turne; and those

things which the sheriffes cannot redresse are to be presented by the sheriffes into the exchequer."

"All those who are presented for any offence which is mortall, and banished persons who are returned, and their receivers, and those who are not in allegiance under the king, are to be seised upon, and their goods to be seised into the king's hands."

"And although it be so that the bailiffe cannot heare and determine any action at *the leete*," (in the original it is "*a la tornee*,") "neverthelesse if any one present be grieved by any wrongfull presentment, and complain thereof, or if the bayliffe or steward have a suspition that the jurors be, in some case, perjured, by concealing of any offence which is presentable, or of any offender, it is lawfull for the bayliffes," (or stewards,) "by twelve more discreet men," (in the original, "per XII. plus vaillant," more courageous or more worthy,) "to enquire of the truth thereof without delay; and although that the last jurours" should say "that the first are perjured, neverthelesse because that no decenery" (in the original, testimony) "or jurours is not attestable" (in the original, n'est atteintable, is not attaintable) "with lesse than two juryes, and because the latter jurie is not taken, but ex-officio, of the bayliffe, and not in the nature of an attaint, the first jurours are not to be taken attainted, but are only to be

amerced. And if any one profer himselfe to sweare fealty to the king, he is first to be pledged in some Franckpledge, and put into the decenery," ("mise en dizein" placed in a decenary, the French word dizein, for a decenary, being manifestly the root of the word dozen, which now bears a very different sense,) "and" (be) "afterwards sworne to the king; and then he is forbidden to offend and common" (i.e. commune) "with offenders, and he is to be enjoyned to be obedient to his chiefe pledge. And to take this oath in these Views is none exempted who is past the age of 21 yeeres," (a transposition of these figures, viz. 12, is the number expressed in the original,) "man or woman, clerke nor layman, except alliens, strangers, messengers, or merchants, and those who are in custody. At these Views of Turnes and Views of Frankpledges, essoignes hold" (tien lieu essoignes," essoines take place or are to be admitted,) "where the absence of those who cannot be there is excusable, and such essoines are adjournable to the next courts following, that the essoines have" ("eyent," may have) "their warrants."

Thus it is manifest that the law requires all persons to attend the View of Frankpledge, and renders them liable not only to the censure of that court, but also to be amerced if they neglect to attend, and have not a reasonable excuse, or

legal essoin, to justify their absence; so that, if sheriffs and other persons who have jurisdiction of leets, were but convinced of the general utility of tithing associations, they have already ample powers to re-establish them in their respective districts; and if the whole body of the people, both men and women, were thus regularly and systematically arranged in their proper divisions, all riots, mobbing, and illegal obstruction at elections, and on other occasions of popular concourse, might be easily prevented, and the obscure sons of violence and anarchy might be most effectually restrained, and by the facility of discovery be rendered "forthcoming," and personally responsible for all misdemeanours, and even for such impertinences and immoralities as ought to be curbed; because every single unit of our national millions of inhabitants, together with his or her communication and manner of living, might then be easily traced, as to a given point, throughout all the regular gradations of shires, thousands, hundreds, fifties, tithings, and families, even to the very chamber of the skulking delinquent. For whether a county be more or less populous, it makes no difference in the efficacy and regularity of this system, because the proposed numerical divisions would still bear the same proportions exactly, with respect to each other, in either case—viz., whether the people be

few or many. And the lesser divisions of tithing are so small and manageable that every individual, as well as every family therein, may be easily known and controuled by their elected chief-pledges, who, with their whole divisions, are again included and controuled in still larger divisions, equally well proportioned, under superior chiefs or justiciaries. And these justiciaries, invested with ample power of law and right, are so limited with respect to tort, wrong, or injury, that they have no authority to act contrary to common consent, nor to proceed against any man without "due process of the law," though they have effectual means of information concerning the abode and general circumstances even of the meanest individual, throughout all the tithings, by their nearest neighbours and acquaintance; for when the tithings are properly regulated with their superior divisions, each tithing may truly be said to be, "as it were a wheel in the middle of a wheel," (Ezek. i. 16;) and more especially when the rotation of watch and ward, and of other public service, is duly circulated throughout all the divisions of a whole nation; for such "wheels" are indeed "full of eyes round about," (Ezek. x. 12,) eyes to convey information and complete knowledge in all popular concerns whatsoever; so that the most obscure offender cannot escape the justice of the

community, whenever he is duly indicted and sought.

And, lastly, as the original intention of these legal divisions of the people into tithings and hundreds was obviously for military as well as civil purposes, some other additional articles of inquiry will also be necessary to re-establish and maintain the ancient legal military duties of the people in a regular watch and ward throughout the kingdom, in order to prevent every species of robbery, riot, or other violence whatsoever, by internal enemies, as well as to be thoroughly prepared against the apprehensions of invasions by foreign enemies.

That this was an ancient object of inquiry at Views of Frankpledge is manifest, by the article which I cited from Fleta. "Item de vigiliis non observatis"—"Also concerning watches not duly observed."

The duties of watch and ward, or guard, were rendered light and easy by an equal service of the whole body of the people "in rotation;" for which the modern term is "a roster of service." (See Leges Gulielmi Regis," as published in Lambard's Archionomia, 1st edit. 4to, 1568, fol. 125, Statuimus, &c.) "We ordain that all the cities, and boroughs, and castles, and hundreds, and wapentakes, of our whole kingdom aforesaid, shall every night be watched and

guarded in gyrum"—i. e., into a circle, or rather by "a rotation" (viz., a roster of service) "against crimes and enemies, according as the sherifes, and aldermen, and magistrates, and our ministers, shall best provide by common council for the welfare of the kingdom." And a little further he adds, "Statuimus et firmiter præcipimus," &c. "We ordain and strictly command that all earls, barons, knights, ministers," (servientes, or serjeants,) "and all the freemen of our whole kingdom aforesaid," (universi liberi homines totius regni nostri prædicti,) shall have and hold themselves always well in arms and horses, as it is fit and right, and that they may be always ready and prepared to fulfil their entire service to us, and effectually to act whenever there shall be occasion, according to the duty which they ought to do of right (de jure) to us, for their lands and tenements, and according as we command them by the common council" (i. e., by the parliament) "of the whole kingdom aforesaid." And this entire service to the king, thus duly limited by the national common council of the whole kingdom, was rendered still more suitable to the dignity of a free people, by the entire election also among themselves, of all their officers; not only of the tithingmen, (who had the civil power of constables and the military authority of serjeants,) and of the hun-

dreders, (who had the civil authority of high-constables and justiciaries and the military rank of captains,) but also of the viscounts, or sheriffs, and of the heretochii, the commanders or leaders of the army ; ductores exercitus."

" The same" (says the learned judge Atkins, in his Parliamentary and Political Tracts, pp. 253-4) " as, in the dialect of this present age, may be called the lord-lieutenants, or deputy-lieutenants." For this the learned judge refers us to the law of King Edward above cited. This law also provides in terms equally strong, for the general arming of the people, as the act of King William does for " the entire service of the king." (See cap. 35, de Greve.) " Debent enim universi liberi homines totius regni, juxta facultates suas et possessiones, et juxta catalla sua, et secundum feodum suum, et secundum tenementa sua, arma habere, et illa semper prompta conservare ad tuitionem regni," &c. That " all freemen of the whole kingdom, according to their means, &c., ought to have arms, and those always to keep ready in defence of their kingdom." By the same law they were restrained from pawning their arms. " Non debent illa invadiare," (i. e., pignori ponere,) " nex extra regnum vendere, sed hæredibus suis in extremis legare," &c. That " they ought not

to pledge them, nor sell them out of the kingdom, but bequeath them to their heirs," &c.

And to secure obedience to this law, all men, "universi," were obliged, one certain day every year, "to shew their arms throughout the whole kingdom—in the cities, in the boroughs, in the castles, in the hundreds and wapentakes, of the kingdom, which ought to be done," (says this law) "in the same day throughout the whole kingdom, lest any persons should accommodate their friends and acquaintance with their arms, and they themselves receive them back in return, and thereby defraud the justice of the king, and injure the king and kingdom." And the same law also commanded a just and exact observance of the watch-duty, which could be no otherwise, in those ancient times than by a regular rotation of all the people, in gyrum, as described in King William's law, and they were afterwards carefully to provide against fires, when they returned home to their houses. "Et ut wardæ (i. e., vigiliæ vel custodiæ) justè et ritè observentur, et ut cautè deinceps incendiis sibi illic provideant, cum ad propria redibunt."

The duty of watch and guard, by the people, was deemed so very important in ancient times, (and surely ought still so to be,) especially in towns and places of more than ordinary resort, that the law prohibited the holding of markets

and fairs in all places except those that were duly enclosed and fortified, and in which, of course, the inhabitants ought, according to the common law, to perform the duties of watch and guard, and be always prepared and trained in arms, as above described, for the entire service of the king, in the true legal sense of service—i. e., for the preservation of the king's peace in the effectual prevention of all tumults and riots; for aiding and assisting the king's courts and their legal officers in "the due process of the law," and for the effectual security of all peaceable traders and their property. (See Leges Gulielmi Regis.) "Item nullum mercatum vel forum sit, nec fieri permittatur nisi in civitatibus regni nostri, et in Burgis clausis, et muro vallatis, et castellis, et locis tutissimis, ubi consuetudines regni nostri, et jus nostrum commune, et dignitates coronæ nostræ, quæ constitutæ sunt a bonis prædecessoribus nostris, deperire non possunt, nec violari, sed omnia ritè, et per judicium et justitiam, fieri debent. Et ideo castella," (not private castles, but only such as had a regular establishment of civil magistrates,) "et burgi, et civitates sunt et fundatæ et ædificatæ scilicet, ad tuitionem gentium et populorum regni, et ad defensionem regni, et idciro observari debent cum omni libertate, et integritate, et ratione." "Also no market or fair may

be, nor may be permitted to be, except in the cities of our kingdom, and in enclosed boroughs, fenced with a wall, and in castles, and most secure places, where the usages of our kingdom," (so that private castles cannot here be meant, but such castles only as were governed by regular magistrates, according to the common law, as Newcastle, Chester, Rochester, Colchester, Cirencester, Bicester, &c.,) "and our common law and the dignities of our crown, &c., may not be lost, nor defrauded, nor violated; but all things ought to be done in due form, and by judgment and justice. And for this cause, castles," (hereby manifestly intending such castles only as I have described,) "and boroughs, and cities, are established and built—viz., for the security of nations and people, and for the defence of a kingdom, and therefore they ought to be maintained with all liberty, integrity, and reason." Thus every city, town, and borough was supposed to contain within itself a complete establishment for maintaining the common law and the dignities of the crown, and for doing all things in due form, and by judgment and justice, which certainly could not in any other way be effected than by these numerical divisions of the people, in which the magistracy was always duly proportioned to the number of inhabitants; so that, whether they were many or few, they were

all equally manageable. And the rotation of duty, by being regularly circulated amongst all men, was reduced, and rendered easy to all. The cities of the Israelites, under the theocracy, had the same proportion of magistrates exactly which our common law requires, and also regular rotations of public service; but it does not appear that they had our happy constitution of juries, whereby unexceptional and impartial persons from among the people that are neighbours to the parties and the facts, in every cause, are appointed the legal judges of it. Had this indispensable constitution been a part of their law, as it is of ours, it is probable they would not so soon have fallen away from justice and judgment: for they had no sufficient guard against partiality. If a man was accused, he had no right to reject the magistrate from being his judge, even though he knew him to be his enemy, or the friend and favourer of his accuser; whereas, in England, a man may challenge and reject thirty-five jurymen, if he think fit, previous to the trial of a charge of treason, and twenty jurymen, previous to trials for any other felonies, without assigning a reason against them, which is called peremptory challenge; and he may challenge as many more as he can produce just and legal objections against, which is called "challenge with cause." The

total want of this just regulation laid the magistrates of the Israelitish cities more open to the temptation of bribery than they would otherwise have been; and afterwards, under the monarchy, when these heads of thousands were appointed by the king instead of the people, the want of juries became still more apparent; for if the process against any man was directed by the king's letters, or under his seal, as in the case of Naboth, the judges were tempted to preserve only the mere outward form of the law, without the spirit and intention of it; they would not condemn, indeed, without a legal number of witnesses were set up to accuse, but then there was no jury to determine whether or not these accusers were credible witnesses, which the law equally required at that time as it does at present. But, in every other respect, the government of the Israelitish cities seems, as I have said, to have been similar to what our common law requires. The Rev. Dr. Samuel Croxall, formerly archdeacon of Salop, (in his Scripture Politics, chap. viii. § 15, p. 465, &c.) has drawn up an account of the rulers of cities in Israel, ready to my hand, which is so suitable to my present purpose, that I should do injustice to the subject, if I neglected to give my readers some extracts of it in the author's own words.*

* Vide Appendix A.

The military duties of watch and guard in cities, towns, &c., which by the laws of King William I. were ordered to be performed "in gyrum,"—i. e., in due rotation of service by all the inhabitants, as I have already shewn, were further regulated by the statute of Winchester, in the 13th King Edward I., A.D. 1285, which without altering the former law about rotation, specifies the strength of the guard to be set in each place, and ordains (See Lambard, in his Duties of Constables, p. 13, which proves also that he thought it still in force so late as the reign of Queen Elizabeth, in 1584) that "night watches should be kept yearly, from the feast of the Ascention untill Michaelmas, by six men at everie gate of everie citie, by twelve men in everie borough towne, and in every other towne by six men, or four men, according to the number of inhabitants in the towne, all the night long, from sunne setting to sunne rising; so that if any stranger did pass, he should be arrested till the morning, and then set at large, (if no suspicion were found of him,) but if any suspicion fell out against him, then he should be imprisoned till he might be lawfully delivered. And of these watches" (says Mr. Lambard) "the officers before named have the charge, within the limites (or places) of their auctorities, as the constable in his town, the borsholder in

his boroe, and the high constable in all his hundred; and these officers ought to see these watches duly set, and kept, and ought also to cause hue and crie to be raysed after such as will not obey the arrest of such watchmen." This power of arresting suspicious persons, in all towns and boroughs, shews the necessity of having in each town and borough a proper jail, or appointed place of confinement; especially as the common law required, "that if any man was of so evil credit, that he could not get himselfe to be received into one of these tythings or boroes, that then he should be shut up in prison, as a man unworthy to live at liberty amongst men abroad." (Lambard's Duties of Constables, p. 8.) And the expenses necessary for the building and maintaining such proper places of confinement, might be levied by the court-leet on the inhabitants of each district; for the leet has competent power, according to the common law, to levy taxes for defraying all necessary public works, (see Powell on Court-Leets, p. 163;) so that the modern usage of applying to the great national council on such occasions is clearly wrong; because it not only occasions a needless expense, interferes with more important business of the nation, and grievously prolongs the sittings of parliament, but also tends to inure the members to private solicita-

tions in behalf of partial objects; facilitates the practice of canvassing them individually; and thereby lays them open to influence and temptation in higher matters; whereas frequent but short sessions of newly-elected parliaments, like those of ancient times, would effectually cut up the roots of corruption and undue influence.

In order the more effectually to promote the happy system of government, which I now recommend—viz., "that all freeborne men" (within this kingdom) "shoulde cast themselves into tithings," for the common security of all, it was ordained by King William I. "Ut omnes habeant et teneant, legem regis Edwardi in omnibus rebus adauctis his quæ constituimus" (says the statute of William) "ad utilitatem Anglorum." "That all persons should have and hold the law of King Edward" (wherein the more ancient laws for maintaining the tithings and hundreds are collected and stated) "in all things, those things being also added which we have ordained" (said King William) "for the use of the English." And no free nation could reasonably desire more substantial and effectual additions for the security of their own peace and liberty than those additional laws of King William, most of which I have already cited. To these I must now add a farther excellent clause of King William's statute, which is ne-

cessary for the better enforcing and promoting King Edward's laws—viz., "that every man who shall be willing to be deemed a freeman shall be in pledge," (shall enter himself into some tithing of Frankpledge,) "that the pledge may have him to justice, if in anything he should offend; and if any of such" (pledged persons) "should abscond, that the pledges may pay whatsoever damages are laid," (or rather, are proved,) "and may clear themselves that they knew" (or were privy to) "no fraud in the absconded person. Let the hundred" (court) "be demanded" (or summoned) "and the county" (court) "and those who ought of right to attend" (at either of these courts, as the context requires us to understand) "and shall be unwilling, let them be summoned once; and if to a second" (summons) "they shall not come, let one ox be taken; and if to a third," (summons he shall not come, let) "another ox" (be taken;) "and if to a fourth" (summons he shall not come,) "let what is rated be paid out of the effects of this man, which is called ceapgyld, or orfgyld," Regular summonses, however, were required by law, to be made seven days before any of these courts, unless a legal and admissible excuse could be assigned for the omission, ("et septem diebus antea summoniri, nisi publicum commodum vel dominica regis necessitas terminum præveniat,"

see King Edward's law de Heretochiis, &c.) And a neglect or disregard of a legal summons to a court of law might surely be deemed a contempt of the law, the declared penalties for which (a single or double forfeiture of the man's were) may perhaps help to explain the nature of the amerciaments mentioned above for neglect of summonses. " Et qui leges apostabit, (i. e., violarit,) si fuerit Anglicus, vel Dacus, vel Waliscus, vel Albanicus, vel Insulicola, weræ suæ reus sit apud regem ; et, si secundo id faciat, reddat bis weram suam ; et si quid addat tertio, reus sit omnium quæ habebit." " And whosoever shall neglect (or violate) the law, whether he be Englishman, Dane, Welchman, or Scot, or Islander, shall forfeit his were with the king ; and if he shall do it a second time, let him pay twice his were ; and if he shall add a third time, let him forfeit all that he shall have."

To increase amerciaments on the repetition of offences seems to be both just and necessary ; but whether in so enlarged a proportion as that of doubling the were for a second conviction, and forfeit all on a third, may reasonably be questioned ; especially as there is no express exception for second and third offences in the limitation of amerciaments, ordained by the fourteenth chapter of Magna Charta. Nevertheless, if we consider that a frequent repetition of the

same misdemeanour is undoubtedly a heinous aggravation of it, and that it was always so considered in the common law, and punished accordingly by an aggravation of the mulct, as appears by the laws already cited, we shall perhaps be inclined to believe, that the authors of the said limitation of mulcts in Magna Charta, though they certainly intended to regulate by it the pecuniary penalties of crimes in general, yet, for anything that appears, they had not in contemplation the peculiar circumstance of a contemptuous repetition of any crime, and may therefore be justly supposed not to have intended to abridge the salutary spirit of the common law, so necessary for its own preservation, in duly punishing, by gradual advances of severity, any repeated contempts of its authority.

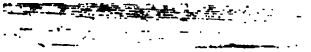
If all these points be duly considered, it must appear that our common law is already vested with ample powers to enforce a revival of the ancient constitution of this kingdom; so that nothing is wanting but a general communication of its principles (the purpose of this tract) to engage the will of the public for its reassumption; that the "summa et maxima securitas" of our ancestors (see page 13) may be once more established, the happy effects of which cannot be expressed in stronger terms than in the words of Sir Edward Coke on this very

subject. " By the due execution of this law," (says he, speaking of the View of Frankpledge, in his comment on Magna Charta, p. 73, 2nd Inst.,) " such peace" (whereof this chapter speaketh) " was universally holden within this realme, as no injuries, homicides, robberies, thefts, riots, tumults or other offences, were committed; so as a man with a white wand might safely have ridden, before the conquest, with much money about him, without any weapon, throughout England; and one saith truly, conjectura est, eaque non levis, haud ita multis scatuisse prisca tempora sceleribus, quippe quibus rapinæ, furto, cædi, plurimisque aliis sceleribus mulctæ imponebantur pecuniariæ, cum hiis hac nostra tempestate, nos omnibus merito capitis pœnam irrogamus," &c., 2nd Inst. p. 73.

" Mos retinendus est fidelissimæ vetustatis," 4 co. 78.

GRANVILLE SHARP.

Old Jewry, July 27, 1784.



TWO TRACTS:

I.

A PROPOSAL FOR A SETTLEMENT ON THE COAST OF AFRICA.

II.

AN EASY AND PRACTICABLE PLAN FOR LAYING OUT SETTLEMENTS ON UNCULTIVATED LANDS, ETC.

BY THE LATE

GRANVILLE SHARP, ESQ.

EDITED, WITH PRELIMINARY REMARKS,

BY J. I. BURN.

THE two following tracts may be found useful, probably, as furnishing most valuable matter for consideration in modern colonization. The principles are sound, the modes pointed out by the author practicable, and such as are likely to be attended with the best results. It may not be ill-timed, however, to offer a running commentary thereon, and to suggest some hints that will very much improve the present plans of peopling a new settlement. To make the hints more specific, I shall take leave to apply them to the plans already afloat in New Brunswick, and shew how the objects in view may be greatly facilitated by adverting to a new class of occupiers, who may not only be found readily enough, but who, when found, may be still more easily retained as colonists.

There is a great inducement held out to labourers who emigrate of higher wages and greater comforts than the same class can enjoy, or at any rate do enjoy, at home. The inducement is a just and proper one, and the parties are not deceived and disappointed. Better wages are offered, more actual comforts are enjoyed,

and labour never at a loss for want of a market. Now, if they the labourers so emigrated could be also retained to the new country of their present choice, every export of new parties would be a boon and an accession to the colony, by improving the country and adding to the population; thus laying a foundation for present and future blessings, that must in this way go on increasing yearly. The inducement, however, though sufficiently strong to bring them to this colony, is not sufficiently so to retain them there; for in numerous cases, I may venture to say almost innumerable, the same inducement of still higher wages or of a better locality is offered to them, and they first shew themselves in New Brunswick, and then pass over to the adjoining states; lost, therefore, to the British colonist and landowner, and transferred from British subjects to subjects of the United States. It is no wonder that this takes place. It would be a wonder were it otherwise; and means have probably been resorted to for stopping this leak in the colonial vessel by agreements for so many years, by obligations entered into for retaining the labourer in New Brunswick, and entered into only to be broken, when it is the interest, or imagined interest, of the parties to break through such engagements. I apprehend the evil will not be disputed as existing to a great extent; nor that

the means hitherto offered and resorted to have failed in a great measure to secure the object of relieving them. The price of land must consequently be lowered, the value diminished, and the further improvement of it impeded by such means. The finest estate, without labourers to cultivate it, will be of no comparative value, and must so remain till new settlers can be found in sufficient abundance to improve its produce and value. Taking the common principle of human nature, that of self-interest, which rightly pursued is the most valuable stimulus of all, and leads to the greatest good, we must see that some other mode is here required to secure the population, the labour population, to the new country to which it is transported. Now, the interest or inducement of high wages will last just as long, probably, and no longer, than whilst they are the highest that are to be had. This is not unreasonable, and therefore greater sacrifices will be forced on the landowner to retain his men than he can at first afford. Changes, too, if suddenly made, (a thing very likely to happen,) benefit no one, but most of all injure the owner of the soil.

If, in addition to good wages, a direct interest in the soil could be added, the labourer would instantly assume a new character; that is, he would not only be well off for his present and

less. It must be advanced by cultivation; cultivators must be found and applied to do so; and if not retained when found, there is in truth but a precarious and uncertain fluctuation between want and abundance, increase and decrease, both of the means and effects of ambulatory population.

Again, it is quite clear that the congregational, not the dispersed, population of a new district is the most advantageous; the supply of individual and mutual wants is much better attained, and the more rapid increase of all the benefits of civilization secured. Above all, too, the congregational beyond measure promotes good objects, by affording places of worship to the Supreme Giver of all good, that are not and cannot be effected by isolated establishments in the desert. All wants are thus more easily and more cheaply supplied, all the comforts of life more firmly obtained and secured, all improvements more rapidly and with more unerring certainty promoted.

It may be asked, however, and perhaps justly, that in suggesting a remedy for preventing poor emigrants leaving the colony, what specific plan should be adopted; and how is it to be carried out? This is fair and reasonable; and though many plans may be pointed out, yet the following mode is earnestly recommended to notice,

and practice too, as being of very easy application, and probably quite efficient to secure the great object in view:—

The labourers, then, who shall have found their way to New Brunswick, are well employed and well paid the moment they arrive in the colony. It is the certainty of work, and good payment for it, that has brought them thither. Well, then, in addition to this, as the great correction of further wandering, or location in another state, it is proposed to give them an immediate interest in the soil. Let the labourer, then, have one acre to begin with, at the current price of land, but to be paid for in five years, by instalments of increasing amount, as he shall have rendered his farm or freehold more productive; as it will be every year by his continued industry. The increasing amount of his payments, then, will be less felt in the conclusion than in the beginning; for in truth he will still have a greater accession of comfort and enjoyment as he goes on, and no other impediment in his way; but the master who thus disposes of the land has also increasing security for a diminishing debt, and the labourer retained cheerfully and heartily in his first and best location. We may go a step further, and as his family shall increase, and increase of population is the very thing of all others the most needed, let him

have a similar opportunity of adding to his freehold by the purchase of another, aye, and another acre on the same terms, and by the same mode of payment. If the first acre binds him to the soil, the second and the third are also stronger links in the chain, and surer guarantees of colonial advance and prosperity.

To make this plan more clear and determinate, let us apply it to a specific number, and see how it will work. Say, then, that a hundred labourers are to be dealt with in this way; a hundred acres, then, in the first instance will be needed for them; where shall they be meted out? This is a very important question; and, on the principle assumed as the best, the congregational, they should be as near as they can be had to the already-peopled part of the colony; first, for the more easy access of the labourers themselves, and the better improvement of their condition; and secondly, for that there will be the less interruption to their labour for others at their accustomed wages. Though contiguous, then, or nearly so, yet ought the hundred acres to be nearer the waste, so as thus gradually to make beneficial inroads upon it. Having advanced thus far, there is one other thing to be considered and provided for; that is, habitations for some, and tools and stock for all. Here, again, as much as possible should the parties so

to be located provide for themselves, and as they shall be individually inclined; but some means, some assistance, must in many cases be rendered. Now, what system can be better adopted there than that of the loan funds in this country—loans to such as need pecuniary assistance at first; and secured, as they will be well secured, in the future increase and prosperity of the labourer. This of itself would form a new link in the chain of benefits to all parties, and, if possible, still more closely unite their interests, and give more permanency to the increasing population.

Well, then, we have thus secured one hundred labourers on one hundred acres, which instantly assume a new feature in colonial advancement. Security and permanency are given in place of temporary increase of labour, and perhaps as sudden a withdrawal of it. Nothing of this kind is to be now apprehended: the evil is met; it is cured; it cannot again exist. The increase to the freehold, when needed, which will inevitably be the case as the population advances, may be made with increasing security and advantage, and another hundred acres added to those already so well disposed of, and added by again encroaching on the desert, to render them as productive as the former. The allotment system in this country is so decisive in all its bearings, that labour is thus better compensated, that

again and again reference is made to the Labourers' Friend Society, and the volumes of its proceedings, to prove beyond all question the value of the principle.

Unless the remedy above recommended, or some one founded on a like safe principle, be adopted, it is obvious that the existing evils will increase with the increasing emigration from the mother country. The emigrants leave their native country in a great measure because the link that binds them to the soil is destroyed or impaired. What is to bind them to the new location beyond better wages for a time, and no better bond of union, where, of all others, that pointed out is the most needed? But better wages, the first allurement, being secured, and with these the simultaneous allotment of an acre of land to each, to become his own, and by his own means and exertions,—the double stimulus thus given to his industry will not be broken, nor run the risk of being broken, where even better wages are to be had, in the United States. He now looks more to his own resources, in his own labour, on his own land, than merely to an addition to his wages, which, after all, are subject to fluctuation. The very act of numbers going in the pursuit of higher wages, in time must lower them; not so the great, and decided, and increasing advantages derivable from his freehold. The wages

may fluctuate, or even diminish; the freehold advances, in proportion to the labour bestowed upon it. The variable tenure of wages only is not certain in any location or country. Changes may take place in the United States as well as in New Brunswick, and for the worse as well as the better; but they never lead him to independence. Quite the reverse is the benefit of his freehold, that is always improving under his hand, and with the improvement the binding obligation to continue on the soil,—to become, in heart and in truth, a citizen of his new and now better country; and, for the very best of all earthly reasons, because it gives to him increased security against want, increased comforts to himself and his family; and the certainty of the second or the third acre being to be had on the same terms, his means, by an increasing family, increasing therewith: a more satisfactory solution of the existing difficulty is not easily to be found. But my readers will be wearied out with the reiteration of the means given by the Author of all good, to be used by his creatures in the way he has pointed out, "Be fruitful and multiply; till the earth, and subdue it." How can this be done, that is, the earth be tilled and subdued, but by the adequate increase of population? There is no assignable limit to either, if, in correspondence with the

Divine injunction, the means given to man be fairly, honestly, and properly used by man. Above all things, let it be noted in this progression, that all gain, and no one loses.

This has been shewn in the same proceedings to which reference has been made, that is, the volumes of the Labourers' Friend Society; and, having been shewn so clearly as to dispel all doubt, the system has gone on from hundreds to thousands, and from thousands to not less than a hundred thousand tenants on the allotment system, all doing well. It cannot be reasonably doubted, that in the new location, in New Brunswick, for instance, there can be any failure, all the means for giving the system a fair trial being in the greatest abundance. They are in superabundance; they are untried; they are ripe for the harvest of benefit and blessing, ready to be thus opened out and enjoyed. May they be indeed verified to the letter, and the barren wilderness be made to smile with double lustre, and the now aching heart made to sing for joy!

A MEMORANDUM

ON A

PROPOSAL FOR A NEW SETTLEMENT

TO BE MADE

ON THE COAST OF AFRICA;

Recommending to the Author of that Proposal several Alterations in his Plan, and more especially the adoption of the ancient mode of Government by Tithings (or Decenaries) and Hundreds, as being the most useful and effectual mode of Government for all Nations and Countries.

THE proposal for a settlement on the coast of Africa will deserve all encouragement, if the settlers are absolutely prohibited from holding any kind of property in the persons of men, as slaves, and from selling either man, woman, or child. Even to claim any human person as a slave ought to be considered as an affront to the whole community, and be punished accordingly.

With respect to the proposal for leave to purchase slaves, the permission, if granted at all, must be very carefully guarded; and the price given must be considered and declared, at the time of purchase, to be a mere pecuniary debt for redemption, due from the person purchased

to the society or state of the settlement; and by no means to be transferred to any single individual, (which would introduce domestic tyranny and traffic in the bodies of men,) but the debt to be discharged at leisure, without increase or interest, whenever the redeemed, or his friends, shall tender the amount of the first price; in default of which, the price should be worked out by a limited proportional service to the state; and the state should hold forth, at the same time, ample encouragement to engage compliance and submission: but it should be an established principle, that the state or society ought rather to lose the value of the purchase than, by compulsion, to inforce involuntary servitude, whereby honest labour, that should always be deemed honourable, is rendered odious and slavish.

Rules must also be laid down to prevent the monopoly of land within the bounds of the settlement: and a sufficient reserve of land must be made for public services (schools and religious instruction) in each township; and for cottage land, to be distributed in small parcels to new settlers and redeemed captives; which parcels must revert to the state or community, for the same benevolent investiture to others of the like condition, as soon as the temporary possessors are enabled to purchase larger lots; for it will prevent, in some degree, the monopoly of land,

if the cottage-lots are untenable with other land. Common land should also be reserved for a competent distance round each town and village, wherein all inhabitants, rich and poor, should have an equal personal right: because the claims of rich landholders, when made in proportion to the size of their bordering estates, are unreasonable and unjust; and have occasioned a cruel perversion of the utility of common lands in England: for the live stocks of rich farmers, occasionally turned loose upon the commons, generally deprived the cattle of the poor inhabitants of their necessary sustenance; and the late divisions for enclosures, by act of parliament, having been, for the most part, inconsiderately granted in the same unjust proportions, have at length nearly annihilated the common lands of England: whereas on the contrary, the large possessions of the neighbouring landholders ought, in reason and natural justice, rather to have excluded them from the least share in the inheritance of the poor inhabitants; or, at most, their share should have been merely personal, as men, and individuals, equal to, but not exceeding, the claims of their neighbours, that the common lands might be truly in common.

The managers, entrusted with the Society's property to form the settlement, should have no settled dominion or authority over the people as

governors or judges, but should be contented with that superiority and influence, which their pecuniary trust, as agents and overseers for the society, will naturally afford them; and their services may be amply rewarded and encouraged after the first year's salary, by an admission to a due proportion or share with the members of the society in the general profits of the settlement, and in the profits of the common or public trade of the society; but no private trade whatsoever should be permitted to any of the society's managers and agents.

The officers for internal government, as the governor or mayor, the sheriffs, and other magistrates, constables, &c., &c., should be freely elected every year by all the inhabitants; due qualifications being premised to render men eligible to offices of dignity and trust.

The purposes of the defence, legislation, public justice, government, and subordination of the settlers, and their union as a community, (however large and extensive the settlements may hereafter become,) are points more easily to be accomplished than is generally conceived; provided the ancient Anglo-Saxon government by mutual Frankpledge in tithings (or decenaries) and hundreds be duly adopted; and this being already consistent with the common law and ancient constitution of this kingdom, (still deemed

legal though not in use,) might be lawfully established, even if the settlement is made within the boundaries of the present English claims; but, in that case, the legal process in all the courts of justice must be carried on in the king's name; and the settlers may not refuse to admit a governor or lieutenant of the king's appointment, with a limited delegation of authority, according to the constitution of England, whenever the privy council shall think proper to send one.

But, if the settlements be attempted in any other part of Africa, not claimed by European powers, the managers must first obtain the consent (and association, if possible) of the native inhabitants, or else the establishment must be made on an uninhabited part of the coast; and as the majority of the settlers will probably be negroes, returned from slavery and oppression totheir native soil, there will be no necessity to form the plan of government strictly by the constitutional model of England, any farther than reason and experience may suggest the adoption of some particular parts of it; but we may, in that case, assume the liberty of drawing a precedent for government from more ancient and more perfect documents than our Saxon records, viz., from the example, or rather the original intention, of the Israelitish common-

wealth, purified and improved by the general precepts and maxims of the gospel, and by the example of free congregational government amongst the primitive Christians, who decided their own temporal litigations and differences, ("things pertaining to this life," 1 Cor. vi. 1—8,) as well as ecclesiastical questions, in their regular assemblies of all the people; which method was an ancient ethnic custom, (derived probably from patriarchal times,) as appears by the example of the pagan Ephesians, recorded in Acts, xix. 38, 39, whom their town-clerk referred to a lawful assembly (apparently distinct, as the context proves, from their ordinary courts of justice, then subject to the Romans) for the examination and resolution of all extraordinary questions.

The Israelitish government, under the theocracy, was administered by freely-elected judges and officers throughout all the tribes and cities, or gates, except in the extraordinary cases of prophetical judges, though these were probably elected likewise, as soon as their superior or supernatural abilities became generally known.

They had a regular gradation of official power, heads of tens, of fifties, of hundreds, and of thousands, besides the provincial governors, who were ancient heads of houses or tribes; these altogether formed one great band of allegiance, uniting the whole community together for action

and defence, as one man, with one mind; viz., by the free resolutions of the majority, the smaller divisions being regularly included and controlled in the larger, and the individuals of all the divisions being mutually bound to each other by the reciprocal ties or allegiance of Frankpledge, which our Saxon ancestors, and many other, even savage and heathen nations,* have in some degree maintained, probably from the patriarchal times; for all men, having the knowledge of good and evil, are capable of this form of government, if it is once properly explained to them and established; and there is no mode of defending, restraining, and keeping in order a promiscuous body of men, so cheap, so easy, or so certainly effectual for every profitable purpose, as that of mutual government by the principles and maxims of right, in such equal proportioned congregations; each of which is a constituent part or member of a more powerful congregation in the great unity or commonwealth, wherein every individual, however violent or morose in himself, is prevented from

* The Romans had their decuriones and centuriones, not only in their military, but also in their civil government; and, consequently, they must have had the popular divisions of tithings and hundreds much in the same manner as those established by King Alfred in England, in imitation of the Israelitish commonwealth; and even the Chinese and Japanese (it is said) have tithings to this day.

injuring others, by having his person and his property rendered answerable for all damages, which he either occasions by his own rapacious violence or caprice, or which he does not endeavour to prevent in others, as a member of the tithing wherein any violence or offence is committed; for, according to the law of Frankpledge, no man is entitled to liberty* that is not duly pledged by his nearest neighbours for the mutual conservation of peace and right.

Under this form of government, all public works, as entrenchments, or earthworks and fortifications, to secure the towns and strengthen the country; canals and highways, for public passage; sewers and drains, for the general health of the country, &c., may be formed and maintained by a rotation of service, in which the value of daily attendance must be estimated, that defaulters may bear their share, or rather a double share, of the burden; and the expense of watch and ward, or military service, must be defrayed in the same manner; by which means no debt will be incurred for the defence of the state. Rich funds may also be obtained to support the credit of a public exchequer, without

* "Omnis homo, qui voluerit se teneri pro libero, sit in plegio, ut plegius cum habeat ad justitiam si quid offenderit," &c.—See Lombard's Archionomia, p. 125, b.

laying any perceptible burden on the community, by a general agreement to punish, by fines and mulcts, in due proportion to the wealth and possessions of delinquents: increasing, likewise, by repetition, for all offences, as well as of omission (or neglect of public duty) as of commission; except for murder, rapes, and unnatural crimes, which, by the laws of God, are unpardonable by any community. The people themselves to be judges, people of the vicinage, unexceptionably disinterested; liable, besides, to the challenge of the parties, and duly sworn (according to the known laws of English juries) to do right, in the presence of the ordinary judges and officers elected to preside and keep order in the assemblies.

GRANVILLE SHARP.

Old Jewry, Aug. 1, 1783.

AN

EASY & PRACTICABLE PLAN

FOR

LAYING OUT SETTLEMENTS

ON

UNCULTIVATED LANDS,

In equal Divisions of Ten Tithings, or One Hundred Families each; whereby new Colonies may be most advantageously formed and extended in regular Districts of Hundreds, agreeable to the ancient legal Divisions of our Anglo-Saxon Ancestors.

SEVERAL years ago I made some memorandums of "a method of forming frontier settlements," which I copied from the second edition of a book first printed at Philadelphia, but reprinted at London in 1766, and intituled, "An Historical Account of the Expedition against the Ohio Indians, in the year 1764, under the command of Henry Bouquet, Esq.; to which are annexed, Military Papers, containing Reflections on the War with the Savages, a method of forming frontier settlements," &c. My reference for the last-mentioned subject is to page 51 of the said book; but, as I have not the book itself at present, I cannot pretend to be perfectly accurate

in my quotations from it, neither do I remember whether the author recommended a government by tithing and hundred courts, with their proper officers, according to the Anglo-Saxon model, but only that his proposed settlements were (happily for my present purpose) laid out in equal divisions of one hundred lots each, for the maintenance of one hundred families; so that, of course, the constitutional regulations for hundreds, recommended in the preceding tracts, will not be less suitable and beneficial to his scheme than his certainly is to mine.

"Let us suppose a settlement," says he, "to be formed for one hundred families, composed of five persons each upon an average.

"Lay out upon a river or creek, a square of 1760 yards; or a mile for each side.

"That square will contain 640 acres.

"Allowance for streets and public uses, 40
"To half an acre for every house ..... 50 } 640 acres.
"To 100 lots at 5½ acres..... 550

"The four sides of the square measure 7040 yards, which gives to each house about 70 yards in front to stockade; and the ground allowed for building will be 210 feet front and about 100 feet deep.

"An acre of ground will produce at least thirty bushels of Indian corn; therefore two acres are sufficient to supply five persons, at the

rate of twelve bushels each person; two other acres will be for cows and sheep, another for hay, or to be sown with red clover, the remaining half acre may be laid out for a garden." Thus far the author's plan may be applicable to lands even in England, especially if laid out in less divisions of tithings instead of hundreds, preserving the same due proportion of land in lots for each family. The ten families, with their habitations, would form a compact little village, under the government of a tithing-man, annually elected from among themselves, whereby all would be rendered mutually responsible for each other for the common peace, and to make good every damage that might be occasioned by the ill behaviour of any individual among them. An estate laid out in small farms, with such a tithing village in the centre of it, for a constant supply of labourers, might be made to maintain a much greater number of people than land generally does in the ordinary way of farming; and would, consequently, be much more beneficial both to the landlords, and to the nation at large. Commons and waste forests or chases might thus be laid out and occupied by the labouring poor, to the great reduction of parish rates, as well as of the price of labour; for free and useful labourers would never be wanting if such a regular provision, under their own ma-

nagement, could be found for their families; but the possession of such parish lots should be limited to those persons who occupy no other land, and should be delivered up to the parish or community, for the use of other unprovided families, as soon as any possessor obtains more land, either as a farm or in fee, (as recommended in a former tract,) to prevent the monopoly of land, and the entire deprivation of the poor from any share in it, as at present.

The remainder of the author's scheme is suitable only to unoccupied countries, like many parts of Africa and America, where the people are few and the lands of small value, viz.— "Round the town," says he, "are the commons of three miles square, containing, exclusive of the lots above mentioned, 5120 acres. On three sides of the town five other squares will be laid out, of three square miles, containing 5760 acres each; one of which is reserved for wood for the use of the settlement, the other four to be divided into twenty-five out-lots, or plantations, of about 230 acres each, so that in the four squares there will be a hundred such plantations for the hundred families. Another township may be laid out joining this upon the same plan, and as many more as you please upon the same line, without losing any ground."

The banks of the river, as in ancient times,

should be deemed common or public, as the river itself, under the conservation of the community; and should be reserved for future improvements, as for the accommodation, not only of fishermen, but also of manufacturers, traders, and of all industrious strangers; and docks or navigable cuts, whenever the level of the country will permit, should be made from the river, as far back, at least, as the centre between every two townships.

The spaces between the squares are left for roads and common communications between the several lots; and the roads which divide two distinct townships should be still more spacious for the common use of all the inhabitants, the cartage of their produce and other traffic, the driving of cattle, &c.; and a spacious road, to be formed lengthways throughout the whole settlement, ought, in forming the lots, to be reserved through the centre of each township; the central lots, which will thereby be diminished in size, will find ample compensation in value by their situation on the great central road.

I would likewise deviate from the original plan of the author, with respect to the situation of the 5760 acres of woodland for each township, which, I conceive, had better be reserved in one of the most distant squares, at an angular situation from each town, instead of being in the

opposite square, according to his proposal; for the towns will not only be more healthy, by having the uncleared lands more distant from them, but also the inhabitants, when on watch and ward duty, will be better enabled to discover the approach of any lurking savages or other enemies in time of war.

GRANVILLE SHARP.

Old Jewry, Aug. 1, 1783.

APPENDIX (A).

THE third wheel of their government, which, as we mentioned before, turned within the other two, was the constitution and magistracy of every city within itself. As the weight of superintending the affairs of every tribe was much lightened to the prince thereof, by the subordinate jurisdiction of the heads of families, the political burden of these latter was, in like manner, considerably alleviated by the share of authority which appertained to the rulers of cities; every tribe having several cities belonging to it, and every city being inhabited by a great number of families.

The chief magistrate in these corporations was called the ruler of the city.

Some have questioned whether there were not more than one of these chief magistrates in every city: that there were many subordinate ones, having gradual authority under one another, is very plain; and that these were the same whom Moses constituted to be judges of the people in

the wilderness, by the advice of Jethro his father-in-law. Exod. xviii. 25. "He chose able men out of all Israel," (but I have already proved that the able men were really elected by the people,) "and made them heads over the people; rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens. And they judged the people at all seasons: the hard causes they brought unto Moses, but every small matter they judged themselves."

When, therefore, the tribes came to have cities belonging to them, there these magistrates presided and exercised their jurisdiction; which consisted principally of these three parts:—First, to convene and hold senates and councils, in order to enact such by-laws as were expedient for that body corporate, of which they were members. Secondly, to commission and authorize the judges to enter upon and to determine, in the judiciary way, such small matters as lay properly within their cognizance. And, thirdly, to make a part of the great council of the nation, as often as it was summoned to assemble by that person who held the helm of government.

These are they who are intended in that precept, where it is said, (Deut. xvi. 18.) "Judges and officers shalt thou make thee in all thy gates which the Lord thy God giveth thee throughout thy tribes." Which officers we find mentioned

upon other occasions. (Deut. xxix. 10.) "Ye stand this day all of you before the Lord your God; your captains of your tribes, your elders, and your officers." Again, Moses says, (Deut. xxxi. 28,) "Gather unto me all the elders of your tribes, and your officers." And we find Joshua, when he was old and stricken in age, (Joshua, xxiii. 2,) "called for all Israel, and for their elders, and for their heads, and for their judges, and for their officers."

So, when David calls together the great congregation to declare his purpose about the building of the temple, (1 Chron. xxviii. 1,) we read of the captains over the thousands, and the captains over the hundreds, with the officers, being summoned upon that occasion. And, afterwards, we are told that Solomon made a speech unto all Israel, (2 Chron. i. 2,) "to the captains of thousands, and of hundreds, and to the judges, and to every governor in all Israel, the chief of the fathers." And thus, when that pious prince, Hezekiah, was resolved upon a reformation both of religion and manners, throughout his kingdom, it is said, (2 Chron. xxix. 20,) "Then Hezekiah the king rose early, and gathered the rulers of the city, and went up to the house of the Lord."

As to their judiciary capacity, they were not, strictly speaking, judges themselves, but had the

power of admitting what causes they thought were proper to come before the judges, and of rejecting what they looked upon as frivolous, or unnecessary to be inquired into. * * *

Of the judiciary authority of these rulers we read farther in the case of Jeremiah. When (another) Micaiah had heard his prophetical denunciations against Israel and Judah (Jer. xxxvi. 11) he went down into the king's house, into the scribe's chamber, where all the princes (these rulers) were sitting, and informed them of it. And after, when Jeremiah was going out of the city into the land of Benjamin, Irijah, who suspected that he was going to desert to the army of the Chaldeans, who were lately broken up from besieging the city, (Jer. xxxvii. 12,) took Jeremiah and brought him to the princes. Wherefore the princes were wroth with Jeremiah, and smote him, and put him in prison.

And upon his farther prophesying that the city should be given into the hand of the King of Babylon, therefore the princes said unto the king, "We beseech thee, let this man be put to death." Then Zedekiah, the king, said, "Behold he is in your hand; for the king is not he that can do anything against you." Which shews that they bore a mighty sway in the great council of the nation; and that, when they prayed judgment and execution against any one, even the

king thought it most safe and prudent to comply with them.

The number of these rulers in every city was in proportion to the number of its inhabitants; as many thousands as it contained, so many rulers, of that rank and denomination, belonged to it; from which regulation the estimation and consequence of each city was discernible at one view. And from this consideration arises that fine allusion of one of the prophets concerning the place where Christ should be born; so understood and applied by the chief priests and scribes themselves, as the evangelist informs us, (Matt. ii. 5, Mic. v. 2,) "But thou, Bethlehem, Ephratah, though thou be little among the thousands of Judah, (in comparison of those cities that have rulers of thousands belonging to them,) yet out of thee he shall come forth unto me—that is, to be ruler in Israel; whose goings forth have been of old, from everlasting." So exactly was almost every minute circumstance relating to the Saviour of mankind delineated and foretold by those divinely-inspired writers, who lived so many hundred years before he came into the world. * *

Captains of Thousands, &c.

The rest of the officers that governed the army we find called by the titles of captains of thousands, captains of hundreds, captains of

fifties, and captains of tens; who probably were of the same rank with those whom Moses constituted, in the wilderness, rulers of thousands, &c., and at first acted in a double capacity, being at the same time civil magistrates and military officers.

The captains of thousands seem to have been much the same as colonels of regiments with us; and the captains of hundreds might probably answer to those who, in our army, have the command of troops and companies; the captains of fifties and tens, to our subalterns, serjeants, and corporals.

Among the list of David's adherents, while he fled from Saul (1 Chron. xii. 1, 14) and kept himself close at Ziklag, after several names mentioned, it is said, "These were of the sons of God, captains of the host: one of the least was over an hundred, and the greatest over a thousand." Again, we read of others, said (1 Chron. xii. 20) to be captains of the thousands that were of Manasseh. And, when David had thoughts of bringing the ark of God from Kirjathjearim, we are told (1 Chron. xiii. 1) he consulted with the captains of thousands, and hundreds, and with every leader. And, again, when he declared his intentions about building the temple, it is said that he (1 Chron. xxviii. 1) assembled all the princes of Israel, the princes of the tribes, and

the captains of the companies that ministered to the king by course, and the captains over the thousands, and the captains over the hundreds.

So, when Jehoiada the high-priest had a mind to bring on the restoration, by declaring Joash to be king, (2 Kings, xi. 4,) he sent for the rulers over hundreds, with the captains, and the guard, and shewed them the king's son, and gave them proper instructions what they were to do. And the captains over the hundreds did according to all things that Jehoiada the priest commanded. And to the captains over hundreds did the priest give King David's spears and shields, that were in the temple of the Lord. And he took the rulers over hundreds, and the captains, and the guard, and all the people of the land, and they brought down the king from the house of the Lord, and he sat on the throne of the kings. And we read (2 Kings, i. 9, 11, 13) of three captains of fifties, who, with their fifties, were sent successively by Ahaziah, king of Israel, to bring the prophet Elijah to him. The Apocryphal writings tell us (1 Mac. iii. 55) that Judas ordained captains over the people, even captains over thousands, and over hundreds, and over fifties, and over tens.

These officers, from the captain of the host down to the lowest subaltern, appear, after the monarchy took place, to have received their

commissions from the king, (whereas they were before chosen by the people.) When Samuel declares to the people the manner of the king that was to reign over them, this is part of it, (1 Sam. viii. 12 :) he will appoint him captains over thousands, and captains over fifties, &c. Accordingly, when Saul began to grow jealous of David's rising glory (1 Sam. xviii. 13) he removed him from him, and made him his captain over a thousand. So we read, (2 Sam. xviii. 1,) that David numbered the people that were with him, and set captains of thousands, and captains of hundreds over them, (2 Chron. xxv. 5,) and that Amaziah gathered Judah together, and made them captains over thousands, and captains over hundreds.

APPENDIX (B.)

A SHORT, yet very comprehensive and well-stated account of this ancient mode of government was published in the year 1780, on the spur of an occasion which too clearly demonstrated the lamentable want of this excellent institution: I mean the dangerous riots in that year, which could not have proceeded to such an alarming excess, had not this institution been long disused, for otherwise "the civil power," as the sensible author remarks, "would have fully guarded us from its outrages," p. 45. "I ascribe," says he, in Letter II., p. 27, "the complete formation of those general outlines, by which we have ever defined the English constitution, to Alfred, on the authority of historians, who specify the particular regulations which rendered his government so happy as well as glorious, which have been, in some degree, preserved amidst violent and numerous revolutions, to which every Englishman has an unconquerable partiality; and the restoration of which to their proper vigour

and effect would secure our persons and property, and preserve that peace and order which are so essential to the happiness of the community.

"Keeping in view those general, those beautiful outlines, which were formed by the institutions of our early ancestors, over which the people sighed when broken and deformed by the Norman conquest, by the bloody contests of the houses of Lancaster and York, by the tyranny of the house of Tudor, and the folly of that of Stuart, and an attention to which alone rendered the revolution a blessing, we must define an English citizen to be a freeman, who is to owe his protection, and the security of his family and property, to a civil government, of which he is an essential member.

"You will observe, Sir, that I confine myself to one object or one part of our constitution, which provided for the safety of individuals and the preservation of order by the following regulations, still existing in names and forms, the revival of which would be the most beneficial and popular act of government which can well be imagined.

"The whole kingdom was, as it is now, divided into counties, hundreds, and tithings. Ten families were associated, their names entered, their occupations defined; the males in them,

from eighteen to fifty or sixty years of age, pledged themselves for the security of the tithing, and to obey the summons of the decennary, or tithingman, on the least apprehension of danger. They were furnished with such arms as the times afforded.

"The perfect knowledge which every neighbourhood had of its inhabitants, the concern which every man had in the security of every man, and the obligation which every decennary was under to be answerable for his tithing, either prevented all violations of peace and order, or corrected them at their first origin.

"All the decennaries, or tithingmen, were chosen by the people once a-year, and this is an essential circumstance in the institution.

"The ten tithingmen of every district, called a hundred, because it contained a hundred families, chose a person to preside over the hundred, to whom they made their appeals, and who had a power of calling them out. All these were amenable to the earl or count who governed the county, and he was amenable to the king, who, either by the earl or by the sheriff, both of which were of his own appointment,* could call out the whole force of a county, or of any

* The worthy author in this point is mistaken: the sheriff, as well as the earl and heretoch, were, in ancient times, chosen by the people.

number of counties, as the public exigencies required, while the internal peace and order of each district was provided for without his interference, and in a manner perfectly consistent with his general authority and influence.

"Nothing has ever been imagined more simple in its construction, or more effectual in the execution, than this part of the English constitution. The several powers of it, which in most cases are in eternal discord, are here so happily blended, that the people are secure and free; the king's power extends to everything but mischief, and is, in reality, greater than can be obtained on any other plan.

"These regulations might be easily restored and rendered as effectual as ever. The prepossessions of the people are strongly in their favour, and, perhaps, no others can be contrived which will not set the body of the people at enmity with government, which will perfectly allay their apprehensions and jealousies, will make them the ministers of their own security, while the power of the king reaches every individual of them by a chain, every link of which is effectual, and will not interfere with the prerogative of the king in other departments of the state, however the business of them may be administered. * * * *

"If you mean that it is impracticable," says

he, in Letter III., "because the inhabitants of this country are too far advanced in luxury, too indolent, too effeminate, to enter on any plan of security, which will require the least trouble, or put them to the least inconvenience; and if you can ascertain this fact, I have no answer to make; but the trouble and inconvenience are such as would not be complained of by women. What is it but an amusement to learn the common use of arms? what inconvenience to submit to such regulations as may bring together a neighbourhood, a parish, the ward of a city, a town, a district, &c., to clear them of vagabonds, occasionally to assist the civil magistrate, and to lay the basis of a general security, confidence, and strength, where it ought to be laid, in the whole body of the people?

"I will venture to affirm, that there is no other method by which disturbances, riots, and insurrections can be prevented, without debasing the people into the condition of brutes; and there is no other method by which a king may hold every man in the nation in his hands, while every man in the nation would feel and know himself to be as free as it is possible he should be in society.

"Hints have been thrown out of acts of parliament which render such associations as I recommend illegal, but the acts are not specified.

I know there are laws forbidding a man's going armed in a time of tranquillity and peace, without leave from a magistrate, and specifying such assemblies of people as are dangerous and seditious; but without the most distant reference to the right which every man has, from nature, from the connivance of the most despotic governments, and from the express provisions of the English constitution, to provide for his own defence and that of his family; and to unite with his neighbourhood, under the eye and direction of the supreme magistrate, for the general peace and order of the community.

"If there were such laws as you mention they could not possibly have effect, against not only a necessary right of nature, but an essential principle of the English constitution. If a law were made, that, because it is possible an English elector may become venal, therefore all electors must relinquish the right of voting,—would this constitute an obligation? Will any man say that the legislature is competent to the making of such a law?—how much less to annihilate the first and most important principles of human society, by awarding, that, as it is possible men may make an improper use of their limbs, or their arms, which may be as necessary as their limbs, they must therefore suffer them to be taken off.

"The power of the legislature, like every power in human society, is limited by certain and accurate bounds; it may exceed these bounds, and commit absurdities, and even offences The English legislature is just as competent to make a law, by which every Englishman may be banished to the Orkneys, or put to death, as it is to enjoin the people to give up the right of self-defence and preservation, by the use of their limbs or by the use of their arms.

"The apprehension that associations will produce commotions and riots, instead of preventing them, must be pretended only; and all the arguments for depriving the people of the right of associating, because they have often assembled for mischievous purposes, are delusive. Cardinal de Retz says, that all numerous assemblies are mobs; and I will add, that all mobs are mischievous. Let the people who might form such assemblies be divided into small bodies, and, though the individuals be not improved, they will act reasonably and well. The design of associations is, to prevent large and tumultuous assemblies; to arrange the people under the eye of government, as accurately as an army, without diminishing their constitutional independence and liberty; to increase the difficulty of misleading them, and to destroy all ideas of appeals to them.

"Here I beg to be understood, not as aiming at any of the rights of the people; but the idea of an appeal to them has been borrowed from the government of Rome; in England it is, like the introduction of military force, a thing that negligence or mismanagement may render necessary, but the constitution is perfect without it; no supposition is made of the possibility of having any occasion to make it, and, whenever it is made, the remedy may be as hazardous as any evil it can be designed to remove. A whole nation, like the human body, in order to act with harmony and pleasure, must be divided into small parts, each having its local power, subject to the direction and control of the general will." —p. 38 to 44.

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